

LEGAL SERVICES CORPORATION

BOARD OF DIRECTORS MEETING

OPEN SESSION

Saturday, November 20, 1999

10:20 a.m.

750 First Street, N.E.
9th Floor Conference Room
Washington, D.C. 20002-4250

BOARD MEMBERS PRESENT:

Douglas S. Eakeley, Chair
Nancy Hardin Rogers
LaVeeda Morgan Battle
John N. Erlenborn
Thomas F. Smegal, Jr.

F. William McCalpin
Ernestine P. Watlington
Edna Fairbanks-Williams
Hulett H. Askew
Maria Luisa Mercado

STAFF AND PUBLIC PRESENT:

John McKay, President
Victor Fortuno, VP Lgl Affrs, Gen Counsel, Corp Sectry
Edouard Quatrevaux, Inspector General
David Richardson, Treasurer and Comptroller
Jim Hogan, VP for Administration
Mauricio Vivero, VP, Govt Relations and Public Affairs
Doreen Dodson, SCLAIID, Missouri
Sarah Cleveland, Erlenborn Commission
Alex Aleinikoff, Erlenborn Commission
Wilhelm Joseph, Exec Dir, Legal Aid Bureau, Inc. of MD

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MOTIONS: 4, 5, 48, 80, 91, 93, 98, 100, 101, 102, 112,
133, 160

1 P R O C E E D I N G S

2 CHAIR EAKELEY: All right, let me call the meeting
3 to order, with my apologies for the delay in the starting
4 time.

5 Welcome, everyone. We have an agenda, I have a
6 couple of suggested changes to make to it. First, we are
7 honored to have, in addition to our own, two board members of
8 the Erlenborn Commission present with us.

9 We'll have two other commissioners present for that
10 part of the presentation that John Erlenborn will make for
11 the report and its approval.

12 And the scheduling is tight, so I'd like to suggest
13 that when 11:00 rolls around, or soon after, that we get to a
14 break, we will turn the floor over to our vice chairman to
15 present the Erlenborn commissioners and report.

16 The second change I'd like to make is that after we
17 get through the reports, I would like to have the opportunity
18 to invite the chair of SCLAID, Doreen Dodson, who has flown
19 all the way out from Missouri to meet with us, to come and
20 address us.

21 Are there any other changes to the agenda that we

1 need to make or take up? If not, all in favor of approving
2 the agenda as modified?

3 (Chorus of ayes.)

4 CHAIR EAKELEY: Opposed?

5 (No response.)

6 CHAIR EAKELEY: The ayes have it. You have the
7 minutes of the September 18, 1999 board meeting. Are there
8 any corrections or changes to be made to those?

9 M O T I O N

10 CHAIR EAKELEY: Is there a motion to approve the
11 minutes of the board meeting?

12 MR. ERLNBORN: So moved.

13 CHAIR EAKELEY: And a second?

14 MS. FAIRBANKS-WILLIAMS: Second.

15 CHAIR EAKELEY: All those in favor?

16 (Chorus of ayes.)

17 CHAIR EAKELEY: Opposed?

18 (No response.)

19 CHAIR EAKELEY: The ayes have it. The minutes are
20 approved. Likewise, you had circulated to you the minutes of
21 the executive meeting on September 18. Again, any changes or

1 corrections?

2 M O T I O N

3 CHAIR EAKELEY: Is there a motion to approve them?

4 MS. WATLINGTON: So moved.

5 MS. FAIRBANKS-WILLIAMS: Second.

6 CHAIR EAKELEY: All those in favor?

7 (Chorus of ayes.)

8 CHAIR EAKELEY: All those opposed?

9 (No response.)

10 CHAIR EAKELEY: The minutes of the executive
11 session are approved.

12 Now we're into the reports. I don't have a lot to
13 report, but I do want to mention a couple of things.

14 I had the honor to go up to Denver to address the
15 first state-wide convening of the new Colorado Legal Services
16 program, and it was just amazing to see the amount of work
17 that had been done to integrate the three prior programs. We
18 were at the briefing stage
19 when we met in Denver about how the newly configured program
20 would develop, but it was just at the stage of having been
21 agreed. And the mood was very upbeat, there was a great deal

1 of, I thought, enthusiasm, and it was just a very proud
2 moment to be a small part of.

3 I then actually -- I can't remember the sequence,
4 but I came down here several times in between. Once to meet
5 with our president, but another time to go with our president
6 and Mauricio Vivero to the Hill, where we found Senator
7 Domenici in full debate in the full Senate Appropriations
8 Committee, who left the floor to come out and meet with us so
9 that we could confer upon him our distinguished justice award
10 that he was unable to -- actually, he had arrived in --
11 remember we went to the Rayburn Building in July after the
12 White House event to confer, bestow these awards. Senator
13 Domenici had already been there and then left, because we got
14 there late.

15 So he was there, we just weren't there when he was
16 there. So we went to -- the mountain came to the prophet,
17 and we had a very warm and again, reassuring meeting with the
18 chairman and a good exchange, and a nice opportunity to tell
19 him how much we appreciated his leadership in our cause.

20 We have coming up the annual meeting, and there are
21 a lot of important planning efforts going on for that. We

1 will hopefully have presented to us at that time a strategic
2 plan for adoption and we will be taking steps between now and
3 then to familiarize all board members with the plan and to
4 get input from all board members.

5 And my intention is to appoint an ad hoc task force
6 to help facilitate this process and also establish some
7 criteria for how we address the planning document at the next
8 board meeting. And I'll be back in touch with people after I
9 take soundings on schedules and availabilities to see how
10 that might work out.

11 We also have -- and I hope everyone has -- I'm not
12 whether you do, because they came in at different times to
13 different people -- but another ad hoc committee that was
14 appointed after our January meeting in Miami, the Broderick-
15 Smegal-Watlington committee, came out with a report and
16 series of recommendations to enhance the quality of board
17 participation at and between meetings and in the life of the
18 corporation.

19 And unfortunately, John Broderick had a command
20 performance that required him to be elsewhere with his chief
21 justice this weekend, but my intention would be to follow up

1 with a telephone conference call, having failed to get
2 together in person, in between now and the board meeting, and
3 come back at the annual meeting, probably either with some
4 recommendations or some implementation of some of the
5 recommendations.

6 We also need to get management's input into the
7 recommendations and again, if you don't have the report,
8 please let me know, and we'll get you a copy.

9 But secondly, if you want to chat about it, or
10 react to it, or give some input into where we go with it,
11 that would be welcome and I would invite you to do that.

12 That concludes my report. Now we'll go with
13 members' reports. And Ernestine, can we start with you?

14 MS. WATLINGTON: Yes. I'm sorry John just couldn't
15 make it, because he really was very -- I can't speak for
16 Thomas, but I know for myself, I really appreciate the work
17 he did on that report, and as chair of that committee, and
18 that, you know, we hope it's working. But we, you know,
19 really -- I think he really did a good job on getting it out
20 and everything, and you know, scheduling the meetings.

21 And also, Pennsylvania is on with their plan and

1 they are on line for that one year that they are doing --
2 their regional claim for that process is going well.

3 CHAIR EAKELEY: Good. Thank you. I don't think
4 anyone wants to see the report gather dust on a shelf, and I
5 think we -- our intention is to try and pick it up and move
6 it along to a fruitful discussion and implementation at the
7 annual meeting. Edna?

8 MS. FAIRBANKS-WILLIAMS: Well, I have to report I'm
9 still having a beaver problem.

10 (Laughter.)

11 MS. FAIRBANKS-WILLIAMS: I've decided that Bell
12 Atlantic is digging holes now surrounded by yellow tents to
13 keep the weather off so the beavers don't know what they're
14 doing. I've offered to eat every one they bring me, so -

15 (Laughter.)

16 MS. FAIRBANKS-WILLIAMS: The other thing that I
17 wanted to report was our state survey was awarded to Macro
18 and I immediately found fault with them, because I thought
19 you would think I should.

20 It was -- they were going to do it completely by
21 telephone and the low income people in Vermont -- lots of

1 them -- don't have phones. So we reached a compromise,
2 Justice Johnson and I browbeat them into doing focus groups
3 and having an 800 number at a local agency so that they could
4 talk to some low income people at the Office on Aging and at
5 the OEO. So that is progressing.

6 CHAIR EAKELEY: LaVeeda?

7 MS. BATTLE: I don't have a report.

8 CHAIR EAKELEY: Tom?

9 MR. SMEGAL: Bucky and I and yourself and John, of
10 course, attended the NLADA meeting last week, and
11 participated to some degree. To follow up on what Ernestine
12 said, John Broderick did a tremendous job, and we should all
13 take a look at that.

14 I'm distilling from the session we had in Miami
15 some very significant thoughts in that report. Thank you.

16 CHAIR EAKELEY: Forgive me for not -- I meant to
17 report on my visit to Long Beach with you and John last week,
18 at the NLADA -- and Bucky -- at the NLADA annual convention.

19 And it was, I thought, a really good session, with a lot of
20 meaningful exchanges and a good learning experience. John?

21 MR. ERLNBORN: Nothing of interest. I'll yield

1 back.

2 CHAIR EAKELEY: Maria Luisa?

3 MS. MERCADO: I have nothing to report.

4 CHAIR EAKELEY: Bucky?

5 MR. ASKEW: I said yesterday, and I think I should
6 repeat here, that I did attend the NLADA convention. Tom and
7 I were in the audience, and our board chair and our president
8 made presentations there. Our staff did us a wonderful favor
9 by announcing the competition decision a week before the
10 NLADA convention so there was a little bit of activity around
11 that at the convention.

12 Both our president and our board chair, I thought,
13 did a wonderful job of setting the right tone in the remarks
14 they made at the opening assembly, and then at the civil
15 caucus, responding to some of the concerns that were raised,
16 making a very constructive and affirmative statement on
17 behalf of the corporation and our willingness to work with
18 the programs, to work through these issues.

19 So I had to leave right after that, but I thought
20 it got the convention off to a good start, from our point of
21 view.

1 MS. ROGERS: No report.

2 CHAIR EAKELEY: Bill?

3 MR. MCCALPIN: I think -- I hope -- that the
4 members of the board received my communication of November
5 3rd. I'd like to make two quick points in connection with
6 it.

7 The first has to do with process. It seems clear
8 to me that the board was not advised, as required by the
9 communications policy.

10 I got the first information about it when I read
11 the inspector general's semi-annual report, which says,
12 "Shortly after the close of the reporting period, the
13 inspector general and the LSC president submitted a joint
14 legislative proposal."

15 I got this document on the 2nd of November. I
16 believe the close of the reporting period was September 30.
17 It doesn't seem to me that that is a contemporaneous
18 communication.

19 But more important, I think, is a matter of policy.

20 I believe that any legislative proposal which comes from the
21 corporation to the Congress ought to be vetted through the

1 corporation, including the board.

2 I think that the Congress is entitled to believe
3 that when a formal legislative proposal comes from this
4 corporation to it, it has the approbation, the approval, of
5 the policy-making body of this organization. And that
6 clearly didn't happen in this case.

7 It may be that we need to review the communications
8 policy or make sure that that doesn't happen again.

9 The second point I would make has to do with
10 substance. I had not seen the legislative proposal when I
11 sent my communication of November 3rd. That came a day or
12 two later.

13 In my personal judgement, I think that proposal was
14 unnecessary, at least undesirable. I think that it denies,
15 trespasses upon, abrogates an important right of poor
16 clients. Not because they are accused of any wrongdoing, or
17 even suspected of any wrongdoing, but rather, in an attempt
18 to find out whether the provider to them may have done
19 something wrong.

20 And I suggest that that's inappropriate to subject
21 poor clients of -- the only clients in the country -- to that

1 kind of a trespass upon their rights.

2 I believe that the draft is poorly done, almost an
3 embarrassment to the corporation in the way it's done. It's
4 so broad as to be unnecessary. And in my judgement, it may
5 well not accomplish what the framers had in mind, because it
6 overlooks, ignores an important aspect of this whole issue.

7 I believe that the board ought to let the Congress
8 know that that proposal did not have the review and the
9 approval of this board.

10 CHAIR EAKELEY: Thank you. I think the one point -
11 - I mean, clearly communications policy is important, and
12 I'll let John and then the inspector general address how this
13 came up, but there is an impression that management
14 participated with the Office of the Inspector General in
15 formulating and jointly approving the legislation, and I
16 don't think that was --

17 MR. MCCALPIN: It says so here.

18 CHAIR EAKELEY: I don't think that was the case,
19 but I did get -- I mean, I have to plead guilty of this, too.
20 I got a call from John. Time was of the essence, John said
21 that this was something that was going to be presented. I

1 never saw the language until I got the IG's letter and
2 Mauricio Vivero's report as well.

3 But I think we need to take another look at both
4 communications policy and at the legislative proposal. I
5 seem to recall, but I defer to the expert on the board on
6 this issue, but if it was an OIG initiative, there is a
7 requirement to simultaneously advise, but not pass through,
8 the board.

9 I'm not trying to stand on a technicality here, but
10 my thought was to ask the vice chair, who is also OIG
11 liaison, to really coordinate with you, maybe, Bill, and come
12 back to us at the next meeting to address the issues that
13 you've raised in your report. Yes?

14 MS. BATTLE: I would just like to just follow up on
15 that and suggest that we can probably, if issues come up that
16 require -- something of the magnitude of a legislative
17 proposal, if that kind of thing comes up and as a board we're
18 given a heads-up, that we could be available by conference
19 call if necessary to be able to address it.

20 But it is important for all of us to have it, to
21 know what it is, and understand it. Because ultimately,

1 we're fully responsible for anything that comes out.

2 CHAIR EAKELEY: Yes, I don't think we have a debate
3 here. The circumstances were extenuating, but extenuation is
4 not justification.

5 MS. ROGERS: I wonder when we're going to talk
6 about the merit. It does seem like the board -- since it's
7 an issue, even though it was not enacted, and I assume it has
8 not been reintroduced -- it seems to me that if it's an issue
9 that's likely to be current, that we ought to talk about it.
10 And so that people -- so that there is a known position of
11 the board on this issue.

12 CHAIR EAKELEY: Well, that was behind my thought to
13 ask John Erlenborn to take this up and not let it drop and
14 bring it back to the board in a way that we can act on it, or
15 decide it, or debate it by the next meeting.

16 I don't think anything is likely to happen between
17 now and the next meeting. This is a dead issue, largely, but
18 John McKay, I know, is planning to address it in his report
19 as well.

20 Maria Luisa?

21 MS. MERCADO: And you know, for some reason,

1 because we got time crunched or whatever, that it was
2 difficult to get the whole board together, you might be able
3 to at least get your ops and regs committee together that
4 generally would look at that issue; that would be under their
5 jurisdiction.

6 CHAIR EAKELEY: Let's not debate. I mean, I think
7 this is a provision, I mean, this cuts across lots of things,
8 and I think every board member has a legitimate interest in
9 it. But I think that in order to shape it and fashion it and
10 present it for meaningful discussion, we need a little bit of
11 preparatory work and I was hoping that our vice chair would
12 take that up first.

13 MR. ERLNBORN: Well, I'll be happy to do that.
14 And as far as the timing, apparently there was the feeling
15 that something could have been done in this session of
16 Congress. There were only a few days left at the time. And
17 I don't think that was justification for failure to notify us
18 or to vet it through the board. But at this time, we have a
19 lot of time to work on it, because the Congress is through
20 for this year, and early next year they're not likely to take
21 it up. So it'll be months before this would ever become an

1 issue in the Congress. So we have plenty of time to do it.

2 CHAIR EAKELEY: But I'll tell you my own -- this is
3 not to minimize the communications policy aspect of this, but
4 the access problem is a very real one that impacts, and has a
5 potential to have a few, a handful of programs really impair
6 the credibility of all programs and our credibility as well.

7 And it is a serious, serious issue that does need to be
8 addressed, and we need to address it.

9 And John will address it in his -- hopefully John
10 will not -- John is -- yes, let's segue into John's report
11 now, which will not exclusively devote itself to this issue,
12 but --

13 MR. MCKAY: I'll be glad to, Mr. Chairman, thank
14 you. I'll just take that up initially and just provide some
15 additional background. Most of the points, I think, have
16 been made, and I agree with most of the points the board
17 members are making. But just some additional background.

18 First, the scene of this is really important, and
19 that is the question of having appropriate access within the
20 law to materials necessary to follow up on the various CSR
21 audits. That's the context of this current situation.

1 And to remind board members, we are facing --
2 management is facing follow-up responsibilities, principally
3 handled by our compliance and enforcement unit, from the
4 compliance and enforcement unit, initial visits from the OIG
5 audits, which are referred to us under A50 for follow-up,
6 from the GAO, which comes within A50 as a follow-up
7 responsibility to management staff.

8 And a reminder to all of you that we had
9 approximately 50 programs, including many of our largest
10 programs, who were unable to certify the accuracy of their
11 CSR data to within 5 percent, which under our follow-up
12 procedure, is being referred to compliance and enforcement to
13 first ask the programs to develop follow-up plans and the
14 distinct possibility that we will have programmatic staff
15 over the next year visiting some or many of those 50
16 programs.

17 So the scope of the recipient network that is
18 affected by this question is large, indeed. And I think, in
19 the context of the Congress' justified interest in the
20 question of the accuracy of Legal Services Corporation data,
21 this has always been an issue that has been very much at the

1 forefront of management's consideration in regard to our
2 responsibility.

3 We have had a number of programs who, at the time
4 of the waning days of the appropriations process, the numbers
5 increased. I believe it is coincidental, but the numbers of
6 programs who were, in effect, denying access to materials
7 necessary to follow up on the CSR audits increased.

8 Initially, with the Legal Aid Bureau of Maryland,
9 but followed by programs in Rhode Island, Mummy Valley,
10 Indiana, western Missouri. These were very significant
11 issues.

12 We were able to -- and I want to indicate on the
13 record here before the board -- that we were able to work out
14 a protocol with the Legal Aid Bureau of Maryland which
15 satisfied their assertion of confidentiality, whether it be
16 attorney-client privilege, or Rule 1.6, we were able to agree
17 to a protocol which had initially not been something that
18 either Legal Aid Bureau or management staff thought could be
19 worked out.

20 Initially, the IG recalled his team from the Legal
21 Aid Bureau in Maryland, referred the lack of access issue to

1 management under A50, and then that became an issue for
2 management, to achieve adequate access to follow up on the
3 IG's initial efforts there.

4 Literally, at the end of the appropriations stage,
5 we became aware that at least two of the programs were
6 asserting a broad and -- what I would say -- a blanket
7 opposition to management staff reviewing materials necessary
8 to follow up on those audits.

9 The inspector general, who I think will report to
10 you separately on this, reached the conclusion -- and really,
11 he will give you some additional information on this -- that
12 he was going to go to the Hill, go to the Congress, and seek
13 assistance of legislation. Because in his view, the denial
14 of access, what he was characterizing as a denial of access,
15 was impacting his ability to conduct audits.

16 I think it's fair to say that the inspector general
17 also was concluding that management's difficulties in
18 obtaining access necessary to follow up on the audits had
19 reached a critical point in time.

20 Up to that point, I did not -- and speaking for
21 management staff -- did not believe that pursuing legislation

1 was wise. One, we were not in dialogue with the Judiciary
2 Committee, we were not in dialogue with the board on this.
3 We felt we could work these out with programs, who I think do
4 want, and do understand the importance of the necessity of
5 demonstrating to Congress that they are going to be open and
6 accessible and that they will respond to the issue regarding
7 the integrity of our data.

8 But it became clear to me as we approached -- we
9 were negotiating in Maryland, and we were reaching a
10 situation where we now had multiple programs asserting what
11 we considered to be blanket opposition, resulting at this
12 point -- again, just days before the end of the
13 appropriations process -- a blanket opposition to our
14 efforts, and requiring a recall of management staff from
15 Rhode Island, that we were at a critical stage.

16 The IG made it clear he was going to seek
17 legislation. I believe that's his responsibility, his
18 decision to make, and his obligation to follow up and inform
19 the board, if that's within his call, and certainly he's got
20 his own independent obligations, as I understand it, to
21 report to the Hill.

1 I felt it was important at that point in time to
2 make a decision, because we were requested by the inspector
3 general to go along with him on the question of access to
4 legislation.

5 So two things came into play. First, we had no
6 legislation to work with at that point. But secondly, we had
7 a very, very short turnaround time.
8 And recall that the language that was going to the Hill is
9 going along with our appropriations language. And that, I
10 think, is a critical consideration. It certainly was a
11 critical consideration for me.

12 At that time, I did authorize our staff to proceed
13 to discussions with the inspector general to try and reach
14 some agreement on legislation that would be acceptable to our
15 staff, and I telephoned our board chair, outlined the
16 situation to him, and got his concurrence to proceed in that
17 fashion.

18 In fairness to Doug, and I hope in fairness to us
19 and our staff, we didn't yet have language that had been
20 agreed upon by the two staffs involved, in the IG and in our
21 staff.

1 The result? I concur almost completely in Bill's
2 comments. I'm not pleased at all with it. I felt that as
3 the language was going forward, that the chances this time of
4 having something adopted were remote.

5 But I also thought that it was important for us to
6 go together with the inspector general, to emphasize to the
7 Congress that we were serious about following up on the CSR
8 issue, and to send a message to field programs that a blanket
9 opposition to CSR audit follow-up was a terrible decision on
10 their part, and they needed to work with us and with other
11 national leaders in the legal services community to get the
12 access that we're entitled to and need to protect this
13 program and which protects the confidentiality, whether it be
14 under attorney-client privilege or Rule 1.6, that the clients
15 are entitled to.

16 So I certainly apologize to the board that we were
17 unable to secure your involvement in that process. And all I
18 can tell you is that it was either the inspector general
19 acting alone on legislation -- and he will certainly explain
20 his decision-making -- and I will say in fairness that I did
21 not disagree with his analysis.

1 At that point, once we got to five programs and a
2 sense that we were maybe facing more -- I hope I'm incorrect
3 in that, and I think that the approach that we're taking of
4 working individually with programs will be successful. And I
5 hope we will be in a position to give Congress the assurance
6 that we are one, protecting the confidentiality and privilege
7 rights of the clients, but two, we are getting the
8 information necessary for auditors to answer the questions
9 which we are now under statutory obligation to provide.

10 And I just assure you that the procedure and the
11 process that Bill outlined is not the way any of us wanted
12 that to occur, but we had to be nimble.

13 My understanding of the communications policy was
14 not a prohibition on communications with the Congress. And I
15 recognize that this goes further than communications.
16 Legislation is clearly the prerogative and the dominion of
17 the board. And if the board reflects negatively on our
18 efforts in those closing days -- literally, I think day-and-
19 a-half -- of what we viewed as a window of opportunity to get
20 injected into the appropriations process, then so be it.

21 But I want to be on record here before you as

1 saying that the question of the follow-up on the CSR data
2 issue is a critically important one, it's a bipartisan
3 interest in the Congress, it's a responsibility of the
4 corporation, and we did our very best to try and make that
5 happen.

6 So if there was a violation of any policy of the
7 board, you have my apologies, but you don't have my regret,
8 because I think we did the best job that we possibly could
9 under the circumstances.

10 And now it's before you for consideration. I
11 support and --

12 CHAIR EAKELEY: Just don't go on too much further
13 on this, because there's some better news in the report, in a
14 different order than you were planning to present it, too.

15 MR. MCKAY: Thank you very much.

16 (Laughter.)

17 MR. MCKAY: I promise that my address from the
18 soapbox will end shortly. But I want to say that I support
19 and welcome, and have discussed with the board chair, the
20 desirability of having direct board involvement, because we
21 will have a need to respond to this, to develop it further

1 with the Congress, and it's clearly the board's issue at this
2 point because now we have additional time. And I welcome
3 that. And in fact, I think we all require it. So I will be
4 glad, certainly, to work with any board designee and make
5 sure that that occurs.

6 I don't think I need to add any more, do you?

7 CHAIR EAKELEY: No. Why don't you start with that
8 one?

9 (Laughter.)

10 MR. MCKAY: Let me say we're pleased that anyone
11 who read deeply enough into the Washington Post is aware that
12 the Senate last night approved a number of bills, but the
13 most important one being our appropriation. And the level is
14 \$305 million, a \$5 million increase.

15 The \$5 million is for demonstration grants,
16 discretionary grants made by the corporation in the area of
17 technology. These will be competitive grants, we're just
18 analyzing the language, but it does give the corporation the
19 discretion within a competitive grant system to award, I
20 think, meaningful technology grants to the field. And we
21 will look very much forward to that.

1 Also, if you read into the Washington Post, the
2 White House has accepted, and I believe it is part of the
3 bill, that there will be a .38 percent reduction across the
4 board.

5 We don't know how much discussion there will be in
6 the application of that, but the net sum on this is that we
7 have, in the midst of the political maelstrom, achieved a
8 slight increase, and I think a significant one, and a very
9 important direction of the corporation, which is to enhance
10 technology.

11 And I want to thank our partners, our national
12 partners, I want to thank our programs, who I think really
13 are the key to our success. If they serve their client
14 communities well, as I think most of them are, that's the
15 reason that the Congress continues to invest in the Legal
16 Services Corporation. And I think everyone is due an awful
17 lot of credit. And I want to thank John Erlenborn, again,
18 for his extraordinary efforts with us as we have moved our
19 budget through this time.

20 Let me just report quickly on some other items
21 around the corporation. We have indicated several times that

1 we have been studying our pay system internally. We've
2 completed the pay compensation study, and we are proceeding
3 to implement most of its recommendations.

4 As a general proposition, the pay study showed that
5 internally, we had a number of inequities, where we had
6 people performing duties that were essentially similar in
7 different departments that needed to be equalized. I believe
8 that there were, by the end of the study, three to five
9 changes that needed to be made. Not a lot, in terms of our
10 employee numbers, but significant.

11 It also showed that we are roughly comparable,
12 outside the Legal Services Corporation, to governmental
13 agencies and others in the non-profit world, with the
14 exception, when comparing to the government, that there was
15 not a locality pay indicator -- and we did brief the board on
16 this in Seattle.

17 Given that our appropriation has now gone through,
18 we will expect to implement a locality pay adjustment which
19 will be an increase. We're going to do that over a three-
20 year period of time. The numbers are, I think, it's less
21 than 3 percent per year. Is that right, David? About 2.7?

1 MR. RICHARDSON: That's correct.

2 MR. MCKAY: 2.7 percent per year to take us up to
3 the current locality pay adjustment for Washington, D.C.
4 federal employees. That was the only major issue that our
5 consultant identified.

6 The process involved a number of one-on-one
7 interviews with employees, and a number of overall reports.

8
9 The report itself was released to our staff for
10 their review. Certainly it will be available. In fact, we
11 can send it to all board members. It's fairly thick, and I -
12 - but there is a short executive summary. So we can send
13 them both, or just the executive summary.

14 CHAIR EAKELEY: I'd spare the trees, unless someone
15 would like to see the full report.

16 MR. MCKAY: All right, we'll send the executive
17 summary and the full report, certainly, is available to you.

18 I think our staff have -- and this has been a very good
19 thing for our staff, which has over time, seen different
20 administrations come through, and there was a general sense
21 that the pay equity wasn't where it should be. And I won't

1 tell you that that has been instantly solved, but addressing
2 it out in the open with our staff members, I think, was very
3 useful.

4 In the end of the process, Austino Pino, who was
5 our consultant, presented to the entire staff without
6 management there, and was available for questions, and then
7 he stayed for three days and any employee who wanted to meet
8 with him on a one-on-one meeting as to how it affected their
9 position was given that opportunity. I think in excess of 20
10 of our employees met with Mr. Pino.

11 The financial impact is relatively minor with the
12 exception, I think in the long run, of the locality pay
13 adjustment, which David Richardson discussed, I believe,
14 before finance last meeting in Seattle. But I think Dave
15 continues to believe that if we continue with our current
16 appropriation levels, that we will be able to fully implement
17 locality pay in three years.

18 I believe we probably could have done it in a
19 shorter period of time, but on David's advice and Jim Hogan's
20 and Joan Kennedy's that we implemented this over three years,
21 I think that was the financially prudent thing to do.

1 But that is major news, in terms of your staff.

2 And we appreciate your patience and your support.

3 Our 2001 budget, I want to just indicate we are
4 working hard on the development of a 2001 budget focusing
5 first on field resources. We will be requesting, with the
6 authorization of the board chairman, \$360 million for Fiscal
7 Year 2001.

8 CHAIR EAKELEY: The board has already authorized
9 that.

10 MR. MCKAY: Yes, actually you're right, I'm sorry.
11 In Seattle. \$360 million, and that has been forwarded into
12 the administration. Now we are responsible for developing
13 the various lines that support that, and I just want to
14 outline them for you quickly.

15 We are proposing a \$12.5 million number for
16 management and administration. This would include the
17 comparability locality pay issue I just discussed, and
18 approved by you. It will also include an inflationary
19 adjustment of approximately 3 percent per year, which we have
20 not received in some prior appropriations, and it will
21 include \$1.54 million to strengthen the corporation's

1 compliance enforcement.

2 We'll give additional detail on that, but this is
3 the development of our budget.

4 \$15 million will be requested for technology
5 initiatives. Now, the approval of the budget in this year
6 for technology may adjust this, but we wanted you to know
7 what the current thinking is.

8 This \$10.5 million would be allotted for
9 competitive grants to states and localities, \$4.5 million
10 would be used for demonstration grants to support access. \$2
11 million is set aside in the Fiscal Year 2001 budget for a
12 legal needs assessment, to be conducted by an outside entity
13 contracted by the corporation. \$500,000 would be spent on
14 pilot projects, for collection of information on program
15 performance. An additional \$500,000 would be directed to
16 technical assistance grants to field programs in conjunction
17 with state planning and other initiatives.

18 The remainder of the appropriation, which is \$329.5
19 million, would be distributed to the field under the current
20 appropriations methodology.

21 MR. MCCALPIN: What about the IG?

1 MR. MCKAY: Sorry?

2 MR. MCCALPIN: What about the IG?

3 MR. MCKAY: Well, I didn't include the OIG, but I
4 think it was within the \$2.1 million, which would be the
5 current appropriation. I don't think there is an increase.

6 The management and administration increase is on
7 the compliance side. But I don't think the IG has any
8 additional. He's got a small increase. I just saw this out
9 in the -- basically, a flat budget for the OIG.

10 Vice presidential search, I had hoped to come to
11 the board at this meeting with a final candidate. But I'm
12 not prepared to do that at this time, and I apologize for
13 that, but my hope is that -- and my plan -- is to come to you
14 between now and the January meeting -- and I think can say to
15 you before the Christmas holidays -- with a recommendation to
16 the board, and it will be necessary for us to conduct a
17 telephone conference call meeting, I believe, to get an
18 appointment made and get your input on that before the next
19 board meeting.

20 I apologize for that, but I'm pleased with the
21 direction that we're headed in, and I want to thank the

1 search committee, who have really done an excellent job in
2 helping us identify strong candidates with very good field
3 experience to make this happen.

4 Let's see if I can skip through. I want to mention
5 the strategic planning briefing that was given this morning
6 to board members and staff. We are moving forward on
7 strategic planning, and our hope will be that the strategic
8 plan will come to the board for consideration and input by
9 interested individuals at the annual meeting in Austin.

10 And finally, we are preparing to announce a new LSC
11 newsletter, which we hope will be welcomed by the board, by
12 our national partners, by our friends, and anyone who needs
13 to learn more about your activities and the activities of
14 your staff.

15 We distributed a draft to you this morning, and I
16 know Mauricio and his staff are anxiously awaiting your
17 input.

18 In conjunction with my performance evaluation, I
19 did submit my most recent travel plans and I was going to go
20 off into that, but I can see Julie Clark wincing back there.

21 And I'm not going to talk about where I've been,

1 other than to say it was my privilege to be invited to help
2 bless the new Legal Services building in Hawaii, to be
3 welcomed by Victor Jimanyani and his board, and to learn more
4 about some of the terrific work that's being done in the
5 Legal Aid Society of Hawaii, and to indicate our happiness
6 that the issues regarding the lawsuit over the past are
7 certainly in the past and that we, as an organization,
8 support and appreciate the work of the Legal Aid Society of
9 Hawaii. Mr. Chairman, that's my report.

10 CHAIR EAKELEY: Thank you, John. Any questions of
11 the president?

12 (No response.)

13 CHAIR EAKELEY: Hearing none, and with the
14 inspector general's consent, I'd like to move the agenda item
15 and take up item number 12: Receive, consider, and act on the
16 report of the Erlenborn Commission.

17 And to do that properly, I would like to turn the
18 gavel over to Professor Erlenborn.

19 MR. ERLENBORN: Thank you, Mr. Chairman. And I
20 would ask the two commission members who are here, if you
21 would please come up and take your seat at the witness table.

1 Mr. Chairman, and members of the board, you are all
2 aware that early this year the commission was appointed to
3 look at the question of the meaning of the words, "present in
4 the United States" as a condition for LSC grantees' lawyers
5 providing services for aliens.

6 The commission is composed of five members, all law
7 professors at one time or another, most active -- one, I
8 think Gil Casellas, was an adjunct professor but is no
9 longer.

10 Those members besides myself are Professor
11 Alexander, or Alex Aleinikoff, who is here today, Gil
12 Casellas, Professor Sarah Cleveland, who is here today,
13 Professor Nancy Rogers, who is here today -- we have a
14 quorum, I think.

15 (Laughter.)

16 MR. ERLNBORN: And then Professor Enid Trucios-
17 Haynes, who was the designated reporter, or as I said last
18 night at our reception, rapporteur, the French have the word
19 for it, and significantly Romano, or Ron, Mazzoli, who is a
20 former member of Congress and was very deeply involved in the
21 immigration amendments in the last decade, back in the '80s.

1 The commission solicited written comments from the
2 public, and held two public hearings, one in North Carolina,
3 one in California.

4 Appropriation grantees permitted to represent
5 several classes of aliens, including lawful permit aliens,
6 refugees, persons granted asylum, temporary agricultural
7 workers admitted under the H-2A program. With the sole
8 exception of the H-2A workers, LSC grantees may provide
9 representation for aliens on the same subjects as is provided
10 to citizens.

11 The report refers to these classes as unrestricted
12 categories. The representation of H-2A workers, however, is
13 limited to matters which arise under the provisions of the
14 workers' specific employment contract in areas of wages,
15 housing, transportation, and the like.

16 The presence requirement that was the subject of
17 our inquiry was added to the law because of eligible aliens
18 who have left the United States at some time, at some point,
19 during representation. This practice has been followed
20 without objection from the corporation when conducting audits
21 of LSC grantees, or from agricultural employers and growers

1 associations involved in legal disputes.

2 A recent complaint to the corporation about the
3 activities of a sub-grantee relating to alien representation
4 raised the issue presented to the commission.

5 With a rich background of information from the
6 public hearings and the submitted statements, the commission
7 went about the task of applying the principles of law
8 governing statutory analysis.

9 The commission considered the presence requirement,
10 in light of its plain and ordinary meaning, its context in
11 the statutory scheme, and the purpose and design of the
12 statute as a whole.

13 It's clear that the statute requires an alien to be
14 physically present in the United States at some point. This
15 conclusion does not end the inquiry, however, because the
16 relevant question is not whether an alien must be physically
17 present in the United States, but when the alien must be
18 present in order to be entitled to LSC representation.

19 This was a very important concept, and one that
20 didn't seem to come very quickly, and it's one that I think
21 we have to bear in mind, because the question we're

1 addressing is not if there's a physical presence necessary,
2 but when? That is really the question which is not addressed
3 by the language of the statute at all.

4 I've been reading from the executive summary of the
5 report. I'm not going to read all of it. It will be
6 available to the public as soon as the board adopts the
7 report, if you do, and I trust you will.

8 But I commend this. It's less than four pages,
9 slightly less than four pages. In my law practice, I always
10 impressed on the associates when we were writing briefs that
11 that meant that they weren't supposed to be long. And I
12 think that also applies to an executive summary.

13 It has to be short enough for the attention span of
14 the average Congressman, because a lot of them are going to
15 have to be reading this. And I'm not denigrating the
16 Congressmen, by the way; they have an awful lot on their
17 plate, and they don't have an awful lot of time to read such
18 things.

19 But I think the executive summary really makes the
20 case and explains the reasons why we reached the conclusions
21 that we did.

1 Finally, let me tell you what those conclusions
2 are. For an alien in one of the unrestricted categories,
3 representation would be authorized so long as the eligible
4 alien is present sufficient to maintain residence or lawful
5 immigration status.

6 For H-2A workers, representation is authorized if
7 the workers have been admitted and have been present in the
8 United States pursuant to an H-2A contract. And the
9 representation arises under their H-2A contract.

10 For both categories, the LSC grantees may not
11 represent aliens who have not at any time been physically
12 present in the United States.

13 The report, and I think the summary, both make a
14 compelling case for dispelling the ambiguity which exists,
15 and also implementing the apparent intention of Congress.
16 And based upon that, we made these recommendations.

17 And I would ask Sarah, if you'd like to make some
18 comments, Professor Sarah Cleveland.

19 MS. CLEVELAND: Sure. Thank you. I apologize I
20 wasn't able to be here last night, I had an afternoon class
21 yesterday in Texas and flights aren't such that I could get

1 here in time.

2 It was a great honor to be a member of the
3 commission. I enjoyed working with the commission members.
4 I thought the LSC staff did a Herculean job of organizing and
5 coordinating effort.

6 And I don't think that anyone that participated in
7 the process could leave it without being deeply moved, both
8 by the vulnerability of the client population that we're
9 talking about, which was impressed upon us over, and over,
10 and over again from a number of different groups, and by the
11 tremendous energy and effort that was brought to the
12 commission by LSC grantees in the field, private attorneys,
13 other community and religious groups, and government
14 agencies. They really did the job of going out and building
15 this actual record and taking effort seriously.

16 And I think they did an extraordinary job of giving
17 us the information that we needed, both on paper and through
18 oral testimony, to analyze the problem.

19 I thought it was a difficult problem. The
20 commission, I think, achieved consensus through a very
21 organized process, and I think we are very pleased with the

1 report and stand confidently behind its recommendations.

2 CHAIR EAKELEY: Thank you. And Alex?

3 MR. ALEINIKOFF: Just a couple of brief points. We
4 started the process by looking at the meaning of the word
5 "present" in the context of the H-2A workers, temporary
6 agricultural workers.

7 There are about 35,000 H-2A workers who come to the
8 United States every year, which is only a very small portion
9 of the overall migrant worker population in this country.
10 This is the only group, who we call non-immigrant alien, that
11 is, without green cards, that LSC grantees are allowed to
12 represent.

13 It was an exception to the general rule that you
14 had to have a green card and it was written into the statute
15 in 1986 as a crucial part of a legislation creating the
16 temporary worker program, H-2A program.

17 And the debate that went on in Congress was, "We're
18 going to invite these folks in, but we know from the Viceroy
19 program that people's rights are regularly violated. So they
20 must have some access to legal counsel in order to protect
21 their rights."

1 So the provision of legal counsel to H-2A workers -
2 - as I say, it's an extraordinary phenomenon within the
3 aliens -- is a crucial part of the compromise that brought
4 the program into existence and that weighed heavily in our
5 analysis.

6 But secondly, beyond that, the presence requirement
7 applies not just to these 35,000 workers, but to the millions
8 of aliens who have green cards in the United States. That's
9 what the statute applies the presence requirement over all
10 the categories of aliens who can be represented.

11 And it became obvious to us, as we started off with
12 the problem of these highly vulnerable agricultural workers,
13 that any interpretation we adopted would, in fact, have
14 influence far beyond the small group to all green card
15 holders as well.

16 So our inquiry expanded as we went through, and
17 took testing on the impact of various interpretations of the
18 law on the immigrant population as a whole, and what seemed
19 to be most consistent with congressional intent.

20 Thirdly, the commission began the process with no
21 preconceived notion as to the result it wanted to reach. And

1 I think this is made most clear in the fact that the original
2 Federal Register notice that was published identified three
3 possible interpretations of the statute and asked for
4 comments on each of the three.

5 In the end, the commission accepted none of the
6 three interpretations we began with.

7 The more we thought about the problem, the more
8 complex it became, the more we struggled with the issue, we
9 ended up with an interpretation, as I say, that was none of
10 the original three off the top of our heads that we came up
11 with and asked for comments on. And that, I think, is a
12 deliberative process and very important to the process,
13 overall, and shows really the distance and deliberation of
14 the commission and the process.

15 MR. ERLNBORN: I have one other pleasant duty, and
16 that is to give Sarah her award. Some of the other members
17 of the commission were here last night at the reception and
18 received theirs.

19 It says, "In recognition of and with sincere
20 gratitude for outstanding pro bono service as a member of the
21 Erlenborn Commission." To Sarah Cleveland.

1 (Applause.)

2 MR. ERLENBORN: As I said last night, and I will
3 repeat today, because I want everyone to understand, this was
4 a pro bono effort, as the award says. No one received per
5 diems. Of course, their expenses for travel and food and
6 lodging were covered, but contrary to some of the detractors
7 of the Legal Services Corporation, we did not schedule
8 hearings to get per diem allowances to make ourselves more
9 wealthy. Nothing like that at all. And I just think that
10 ought to be said.

11 I thank you, Sarah and Alex, and I'd be happy to
12 answer any questions, and maybe Sarah and Alex could help, if
13 the board members have any questions.

14 (No response.)

15 CHAIR EAKELEY: Hearing no questions, would you
16 like to convert your report into a motion for its approval?

17 MR. ERLENBORN: Yes.

18 M O T I O N

19 MR. ERLENBORN: I would move that the board accept
20 and approve the Erlenborn Commission report.

21 CHAIR EAKELEY: Is there a second?

1 MR. SMEGAL: Second.

2 MS. ROGERS: Second.

3 CHAIR EAKELEY: Is there any discussion?

4 (No response.)

5 CHAIR EAKELEY: All those in favor?

6 (Chorus of ayes.)

7 CHAIR EAKELEY: All those opposed?

8 (No response.)

9 CHAIR EAKELEY: The ayes have it. The report is
10 approved.

11 And let me just commend our vice chair and the
12 chairman of the commission, but also thank Nancy Rogers and
13 Professors Aleinikoff and Cleveland for their service, truly
14 in the public interest, and truly providing something that I
15 think will have a lasting impact on a very important segment
16 of our population and our community.

17 And we also thank you for coming today and I mean
18 this was an extra effort and a wonderful outcome, but to make
19 this extra effort on top of that extra effort is wonderfully
20 exemplary.

21 And we thank you, and hope our paths will cross

1 again in the future.

2 MS. CLEVELAND: I hope so. Thank you.

3 CHAIR EAKELEY: This brings us back to our agenda,
4 and the report of our inspector general, Edouard Quatrevaux.

5 And while Ed is coming to the table, I just wanted to
6 recognize and greet Wilhelm Joseph, who is the executive
7 director of the Legal Aid Bureau of Maryland.

8 I hope you didn't have too long to spend downstairs
9 with security, Wilhelm.

10 MR. JOSEPH: I didn't.

11 CHAIR EAKELEY: Either got lost in the elevators,
12 or somehow this isn't supposed to be open to the public, or
13 I'm just not sure what the security mentality is down there,
14 but I apologize for the inconvenience. Ed, good morning.

15 MR. QUATREVAUX: Good morning, Mr. Chairman,
16 members of the board. Let me first report that since your
17 last meeting we've issued two reports which you have been
18 provided copies of.

19 One is our audit report, the volunteer auditors of
20 Boston, and which we are pleased to report our audit
21 determined that their statistical reporting was materially

1 accurate.

2 The second was an assessment of compliance with
3 restrictions and the compliance oversight system as of
4 September 30, 1999. And as mentioned earlier, I plan to make
5 this an annual report to the Congress on the statement
6 assessments.

7 I would like to introduce to you C. Eric Kirkland,
8 Ph.D., who has joined us as the assistant IG for evaluation.
9 Eric has -- Eric, please sit down.

10 (Laughter.)

11 MR. QUATREVAUX: Eric has over 20 years' experience
12 in research and development and evaluation, and his work has
13 included nationwide program evaluation, various areas of
14 information technology, design, and education.

15 He holds a number of patents, he is the author of
16 numerous publications. His most recent report covers his
17 performance and results at a study at the National Science
18 Foundation.

19 He's a former director of education and
20 communications research at Cosmos Corporation, a former VP
21 for research and planning for the National Captioning

1 Institute, and the national services manager for the Oracle
2 Corporation.

3 He holds a doctorate in research methodology from
4 the University of Virginia, and a master's in business
5 administration from the Wharton School of the University of
6 Pennsylvania.

7 And I just want to add to that that Eric's
8 expertise is already proving valuable to us, as we look
9 forward to planning our future.

10 CHAIR EAKELEY: Welcome on board.

11 MR. QUATREVAUX: I mention the next item only
12 because Don Saunders made me aware of a press article in
13 which it was said that -- by Senator Bunning -- that I have
14 agreed to investigate, at his request, whether certain suits
15 by some of our grantees represent a pattern of harassment
16 against farm owners. That is not accurate. We have agreed
17 to meet and discuss his request. So I just wanted to clarify
18 that.

19 Let me speak briefly to excess in the statutory
20 language. I don't think this is a good forum to try to get
21 into the substance of the matter, I think there needs to be

1 some exchanges of written material, some discussion.

2 I do want to say I believe we complied, the OIG
3 complied, with the spirit, if not the letter, of
4 communications policy in that we dispatched the
5 recommendation, the proposal to the Hill, late on a Monday
6 afternoon and mailed it to the board the next morning. We
7 did, however, that same morning fax that material to the
8 chairman and vice chairman of the board.

9 I also agree with John's description of the
10 circumstances surrounding the submission of the proposal.

11 I do want you to understand that when we go out to
12 do our work, we don't ask for a great deal. So you should
13 not have an image in your head of auditor's rooms full of
14 case files. It is nothing like that. Our inquiries are
15 limited to that which we absolutely need, and certainly did
16 not include any materials that were subject to the attorney-
17 client privilege.

18 In fact, the provision accepting the materials, the
19 attorney-client privilege, that is in our current
20 appropriation which began in 1996, that language was added at
21 our suggestion in the process. So we thought legally that we

1 would not need access to materials which are properly
2 privileged.

3 The last thing I want to say, without being
4 melodramatic, it's my opinion that this issue is a grave one,
5 and one that potentially could implicate the survival of the
6 program. That's my view. And that's all I have to say.

7 CHAIR EAKELEY: Any questions of the inspector
8 general? All right, I thank you. We will see you back again
9 at the -- well, we'll continue to see you, but we will talk
10 to you again at the executive session.

11 (A brief recess was taken.)

12 CHAIR EAKELEY: I'd like to welcome and call to the
13 table the chair of the standing committee on legal aid and
14 indigent defendants, Doreen Dodson.

15 MS. DODSON: Thank you, Doug.

16 CHAIR EAKELEY: Welcome back, Doreen.

17 MS. DODSON: Thank you very much. I know that John
18 Pickering, who is from D.C. and a wonderful member of our
19 committee, who has filled in for me on a couple of occasions
20 very graciously, but he's been busy the last two weekends and
21 so this time I'm here from Missouri instead of digging John

1 out.

2 CHAIR EAKELEY: We're always happy to have you, and
3 we appreciate, we know that it's an extra effort, by far, to
4 get out here. But it is nice to have you with us.

5 MS. DODSON: Well, I appreciate your time very
6 much. The reason that I am here today, has to do with the
7 litigation -- or proposed legislation, excuse me, not
8 litigation -- that was a legislation that was sent by the
9 inspector general, Ed Quatrevaux, to the Hill.

10 We found out about this probably a little over a
11 week ago, some time after the board received it, and a
12 committee meeting was held last week in Long Beach,
13 California in conjunction with the National Legal Aid
14 Defender Association.

15 So we sent it out to committee members and we
16 considered it there, both in the executive session and the
17 public session.

18 The committee has asked me to convey to the LSC
19 board and management our really very serious concerns over
20 this proposed legislation. It does go -- what it clearly
21 says is that there would be a waiver of attorney-client

1 privilege, and a waiver of attorney work product, although
2 then it does attempt somehow to say that's not really a
3 waiver.

4 The ABA's concern, because this has been an issue
5 before the ABA, for many years, almost since the beginning of
6 the corporation in conjunction with the corporation.

7 We're also very concerned because this privilege,
8 which is really broader than attorney-client privilege, I
9 mean ethics professors would tell you that attorney-client
10 privilege is really a testimonial privilege. Attorney work
11 products, under some circumstances, can be disclosed. But
12 there is the broader ethical responsibility of
13 confidentiality.

14 And it's what, you know, Ernestine, or Edna, or
15 Bucky, or you, or I to go to our lawyer and tell him or her
16 everything they need to know, no matter how embarrassing or
17 humiliating, or anything else, in order that they can fairly
18 represent us, without you know, I don't think it's overblown
19 to say that there is a real sanctity of that privilege.

20 And it goes to the fundamental core of what a
21 lawyer is, which is why the ABA has always been so concerned.

1 I looked at some old materials and lo and behold, back in
2 1976, there is a letter to the ABA board of governors that
3 resulted in a resolution, and that letter was written by F.
4 William McCalpin, as chair of SCLAID, the position that I
5 currently hold. That's been some considerable time ago.

6 The issue has come up in various guises, whether it
7 was the IRS requesting LSC information, or whether it was
8 proposals under the Older Americans Act, it's come up in a
9 variety of ways. But the basic issue has been the same.

10 In 1983 the issue came up again through the Older
11 Americans Act revisions. And again, there were comments sent
12 to the ABA board of governors by F. William McCalpin.

13 In all those instances, I think it -- and I want to
14 stress this point -- SCLAID and the ABA are very much aware
15 of the need of Congress to monitor taxpayers' money. It's
16 not saying that we, you know, would say that's an irrelevant
17 question. It absolutely isn't, and you know that. We have
18 certainly talked to the Hill on many occasions.

19 What we also know though, that this principle has
20 been embodied in -- as we put in the letter to you -- modeled
21 rule of professional conduct 1.6, there are numerous formal

1 and informal ethics opinions of the ADA, going back to 1976,
2 and coming forward, really until this year.

3 This year there's an opinion of the ABA that has
4 nothing to do with Legal Services Corporation, but it does
5 have to do with the same principle. It involves private
6 lawyers, and when their records can be subpoenaed.

7 And the ethics opinion of the ABA says that it's
8 the obligation of the lawyer to resist turning over the files
9 without specific authorization by the client, until they are
10 threatened with contempt of court. And that in the event
11 they're threatened with contempt, then they have the
12 obligation to tell the client that they probably should think
13 about getting another lawyer to bring an injunction to stop
14 the revealing of that material.

15 And that, as I said, had nothing to do with Legal
16 Services Corporation, this was a different opinion.

17 So this is not a principle where we're not here
18 because this is something we think just LSC does. Obviously,
19 this comes up in all kinds of contexts. And as I said, it
20 goes to really, the very essence of being a lawyer and the
21 attorney-client relationship.

1 We don't think that without that, any client would
2 come in and talk to anybody fully and frankly. They just
3 won't do it. We know that -- and we put this in the letter
4 to, and we did send a copy to Mr. Quatrevaux, but in 1993, in
5 Mr. Quatrevaux's report, he said, "The question of LSC access
6 to various recipient documents has given rise to a number of
7 troublesome and frequently disputed issues.

8 "One of the most persistent of these is the
9 question of LSC access to client names and other case-related
10 information which is not protected by the attorney-client
11 privilege."

12 And then he said, "LSC has no need for client
13 confidences or information protected by that privilege." And
14 indeed, I think that he absolutely agrees with that position.

15 I think that, contrary to what he thinks, is that there are
16 situations where he may believe they are overriding issues of
17 importance, and we believe that a compromise can be worked
18 out.

19 This year, as you know, the GAO was asked and
20 looked at various programs' files, and initially there was
21 resistance. And what happened there was a sort of a double-

1 blind protocol was worked out through the Center for Law and
2 Social Policy and Alan Houseman and -- I'm really not sure if
3 LSC management or staff was involved. I did not think so,
4 since it was a GAO -- but at any rate, a protocol was
5 established which absolutely satisfied GAO.

6 It seems to us that there's no reason why we can't
7 work out a reasonable protocol that safeguards client
8 confidences at the same time it provides the appropriate
9 information.

10 I don't think -- we really don't believe that five
11 programs is a huge number of programs. The information that
12 we have been provided by LSC does not match the information
13 about turning over those records that have been given to us
14 by third parties.

15 I'm not sure at this point what is correct, but for
16 people of good will -- and I know that all of us, whether
17 it's LSC management, or the LSC compliance unit, or the
18 inspector general and the board -- all of us want to provide
19 as much legal services to clients and the best quality that
20 we possibly can.

21 I know and believe and trust that no one in this

1 room is interested in restricting people from getting legal
2 aid. We just have to make sure that we don't inadvertently
3 do that, and we don't undermine fundamental privileges.

4 Finally, we are -- would welcome the opportunity to
5 work with you all, with the management, with the LSC
6 compliance unit, with the IG, and whoever else, with CLASP,
7 who has been very helpful, to work out acceptable protocols.

8 Many of the executive directors have said they don't really
9 have protocols, and they would welcome those.

10 And I think that we can do this, and we can do it
11 in a spirit of good will. I don't agree that this is an
12 issue that is dead right now. It's come to our attention,
13 and I believe the source is credible, that the inspector
14 general has already been scheduling meetings with House
15 staffers, concerning his proposed legislation for next year.

16 That would give me real concern, and I hope that the
17 information is incorrect.

18 But if it is correct, that means that there is
19 current activity and it's not something that you can just put
20 off for a couple of months. It may well be something that is
21 going on behind the scenes between now and your next board

1 meeting.

2 So I would -- I appreciate the fact very much that
3 the issue is now before the board, and hope that under -- as
4 I understand it from listening to Doug and Mr. Erlenborn's
5 direction -- that we can work together and work out an
6 acceptable protocol so that we do not breach client
7 confidentiality. Thank you.

8 CHAIR EAKELEY: Doreen, thank you, and I would
9 welcome SCLAID's involvement and participation in trying to
10 get this to advance.

11 What happens if you have a program who rejects the
12 protocols that have been worked out, and who refuses access
13 to non-privileged, non-confidential information under
14 claimant privilege?

15 MS. DODSON: I can't really answer that in a
16 vacuum, Doug, because although I know that there were four
17 programs -- five, now four --

18 CHAIR EAKELEY: This is purely hypothetical.

19 MS. DODSON: -- whatever.

20 CHAIR EAKELEY: Purely hypothetical, but in that
21 situation, it could be -- well, it doesn't take more than one

1 type of situation like that to create a potential powder keg
2 situation.

3 I'm not saying that because of a potential, of one
4 hypothetical, we sacrifice client confidences or attorney-
5 client privilege, but --

6 MS. DODSON: But that's what I think we'd -- this
7 legislation does.

8 CHAIR EAKELEY: I'm not defending the language, but
9 the issue of access is one that is -- access to non-
10 privileged, non-confidential information necessary for the
11 inspector and the corporation to do their job of accounting
12 to the Congress is a very important one.

13 MS. DODSON: Yes.

14 CHAIR EAKELEY: And there has been this historic
15 tension. And finding the way to make the appropriate balance
16 without -- I mean, we sacrifice the programs to the extent
17 that we are unable to maintain our credibility also, or at
18 least put at risk our ability to secure continued funding.

19 So finding the right solution that deals with the
20 hypothetical situation that may be more real than
21 hypothetical, is something that we need to work on, and we

1 need to work on promptly and intensively, and together.

2 MS. DODSON: Doug, I think, you know, you are
3 absolutely right. And we don't quibble at all with the right
4 to monitor the files. That's critical for us to be able to
5 continue funding.

6 My difficulty with the situation that you pose is I
7 don't believe that has ever occurred yet --

8 CHAIR EAKELEY: Okay, well we --

9 MS. DODSON: -- despite the folks on the list. And
10 the reason I don't is this. It has been brought to our
11 attention at SCLAID that the -- actually the LSC compliance
12 office wants broader access than even the IG does. And of
13 all people, I think that that would be inappropriate. I
14 mean, we have been told that, and it may not be wrong.

15 But for instance, asking for 100 random files,
16 total files, and sit in a room and look through the entire
17 file with the names and all the information, is not an
18 acceptable solution.

19 The other reason I don't really accept it is that
20 we've been monitoring files for a long time. The IG has
21 monitored many. And most of the programs with no problem at

1 all. The GAO thought they ran into a problem. That was
2 worked out.

3 Without getting into any of the specifics that I
4 may know about some of the programs, it's very difficult for
5 me to accept the fact that there is no protocol, even a
6 double-blind one.

7 Certainly information that is non-privileged and
8 not confidential should be turned over. But I think the
9 question is what different people may consider non-privileged
10 and non-confidential. There are legislative and statutory
11 exceptions. Those are already in the LSC act. There is no
12 questioning those.

13 There are other items, and some of that may be CSR
14 categories, you know, I'm not the ethicist, and I'm not as
15 good as Alan at describing this, but I do think that there is
16 a way to work it out.

17 And if there is a need, ever, for one program, then
18 whatever is done ought to be directed to that program and not
19 punish the entire class because one kid threw spitballs.

20 CHAIR EAKELEY: Bill, then Maria Luisa, then
21 LaVeeda.

1 MR. MCCALPIN: Doreen came to the point that I want
2 to make, but I think that the protocols that she's talking
3 about that are necessary need to address the question in
4 response to your question of what is non-privileged and what
5 is non-confidential?

6 I think that's the real root of the issue, but I
7 agree also with what Doreen says, that if a program denies
8 access to non-privileged, non-confidential material, then
9 sanctions are warranted.

10 CHAIR EAKELEY: Maria Luisa and then LaVeeda?

11 MS. MERCADO: I wonder if part of the problem --
12 and I think we discussed this in a different forum -- but
13 part of the problem that we have with this issue is that I
14 think the majority, if not all of the auditors that go out
15 for the OIG are not attorneys and don't have that legal
16 ethics. I mean, that's true. We said this
17 yesterday at the provisions committee when we asked about
18 whether, if they're reviewing, if they're looking at whether
19 or not the compliance aspect of it is present, whether if you
20 have someone that's in a CPA mode auditing the finances part
21 of it, or the legal aspect part of it that is being

1 evaluated, and so that maybe -- and of course this may mean
2 that there may have to be more funding for the OIG to get
3 legal people to do some of their monitoring and compliance as
4 well, along with the compliance of the executive office or
5 the MNA line. Because I think that's part of the problem.

6 CHAIR EAKELEY: I think it's unfair to the OIG and
7 unfair to management to say that there is a problem. There
8 is an issue here that we need to pursue, but I -- we need to
9 pursue it. I think we're into an area of fact-finding or
10 verification and we ought to come back and talk about it,
11 because I know I don't think the IG does compliance audits.
12 That's the management's responsibility. They do do audits
13 and they need auditors to do audits.

14 MS. ROGERS: What I would like to know is what, in
15 the meantime --

16 CHAIR EAKELEY: Go ahead. I'm sorry. I
17 interrupted Maria Luisa, but you go ahead and then we'll go
18 to LaVeeda.

19 MS. ROGERS: What I'd like to know is what will be
20 represented as the management position in the interim, before
21 John comes back with his report?

1 CHAIR EAKELEY: Say that again?

2 MS. ROGERS: What will be represented as the
3 management position on whether there ought to be an
4 abrogation of the privilege, from this day forward?

5 MS. BATTLE: Well, if I might --

6 CHAIR EAKELEY: Yes?

7 MS. BATTLE: I really think that the key point now
8 is that the province of legislative initiatives is the board.
9 And right now, if there is some consideration by Congress,
10 for any reason, of a legislative initiative, that the board
11 needs to take a look at what it is it needs to make a
12 decision, and it may be based on what Doreen has said to us,
13 that we need to put that on the front burner rather than the
14 back burner, if it's being considered.

15 And my suggestion was going to be that possibly
16 provisions and ops and regs jointly could look at it, because
17 it does have some implications from both standpoints of view,
18 and come back and make it clear.

19 And the other thing is that in the interim, I think
20 it needs to be clear that the board -- that whatever is under
21 consideration has not been adopted by the board.

1 CHAIR EAKELEY: Well, nobody's made that
2 suggestion.

3 MS. BATTLE: Yes, but I --

4 CHAIR EAKELEY: But to answer your question, I
5 think that yes.

6 MS. BATTLE: If I could finish --

7 CHAIR EAKELEY: Yes, sorry.

8 MS. BATTLE: But I do think that it is important
9 that we move this to the front burner and that the board take
10 its action on what it views as the appropriate way to address
11 this issue of assuring that sufficient information is made
12 available, both to auditors and compliance, and a clear
13 definition of what the attorney-client privilege is and how
14 it ought to be addressed.

15 CHAIR EAKELEY: Yes, I'll let John respond to
16 Nancy's question, then we'll get to Edna.

17 MR. MCKAY: Let me just say that I agree completely
18 with what LaVeeda just said, with respect to ongoing
19 legislation, and there's no question about that however the
20 board sets the protocol for that, I certainly agree with.

21 In the meantime, I need to correct the record,

1 because what you said, Doreen, is incorrect with regard to
2 compliance and enforcement efforts to achieve files, because
3 there is an implication there -- and if I took it incorrectly
4 I apologize -- but there's no effort by compliance and
5 enforcement to violate the attorney-client privilege by
6 seeking information which would violate it. And I think that
7 that is unfair to assume that that is what the inspector
8 general is doing, or anybody else in this process.

9 Our intention in management will be to continue to
10 work directly with programs to arrive at protocols that will
11 allow us to achieve the follow-through on audits that are
12 necessary.

13 Wilhelm Joseph is here and certainly could testify
14 to the fact that such a protocol has been reached in the
15 interim by management through its compliance and enforcement
16 group and under Danilo Cardona's leadership.

17 And so that has occurred and it is our intention to
18 work with programs who have, in our judgement, incorrectly
19 asserted either attorney-client privilege or 1.6, or other
20 reason to prevent our compliance and enforcement staff from
21 reviewing documents that are clearly outside of the privilege

1 or 1.6. And we will continue to do that. That is our
2 responsibility.

3 CHAIR EAKELEY: Nancy's question about where were
4 you on the legislation, in the interim, while the board takes
5 this up and looks at the issues that are underlying the
6 legislation.

7 MR. MCKAY: Well, we will take no action with
8 regard to the management side, with regard to any
9 legislation. The legislative window is closed on the
10 appropriations, and we will not assert it or push it, and we
11 hear the board's position here, with which I concur.

12 And just let me reiterate, the only reason it moved
13 forward in the meantime was my judgement, in consultation
14 with the board chairman, that we had a very, very narrow
15 window to respond.

16 MS. ROGERS: Would it be fair to say that this is
17 no longer management's position, to support the legislation
18 that we saw?

19 MR. MCKAY: There is no legislation pending, and we
20 will not --

21 MS. ROGERS: But if someone is working with staff

1 and so forth, it's no longer accurate to say that management
2 would support a draft like the one that was introduced
3 before.

4 CHAIR EAKELEY: Can I answer that one? I think
5 that John was saying, or let me paraphrase John. I think
6 that this issue is now before the board. And therefore the
7 board and management have to work together to develop it in a
8 way that is timely.

9 MS. ROGERS: So the answer is it's no longer a
10 position of the corporation that such legislation should come
11 forward?

12 CHAIR EAKELEY: I mean, I wouldn't say that, but I
13 think --

14 MS. ROGERS: I'd like to know the interim position.

15 CHAIR EAKELEY: I don't think the board can adopt
16 an interim position without taking stock, and I don't hear
17 that it's necessary for us to do that in the interim.

18 MR. MCKAY: Well, let me --

19 MR. ERLENBORN: Mr. Chairman?

20 CHAIR EAKELEY: Yes?

21 MR. ERLENBORN: Might I differ on that? We have a

1 legislative proposal that's been sent up to the Hill. It
2 continues to bear the imprimatur of the corporation, as well
3 as the inspector general. And it will continue until
4 something is done to change that situation.

5 Now frankly, and I really didn't want to get
6 involved in this, but frankly, when I read this language, I
7 was embarrassed that it would go to the Congress with the
8 imprimatur of the corporation.

9 The language is so loosely drawn -- I haven't read
10 it just recently, but as I recall, it said something like
11 this. Any investigator or auditor who receives federal funds
12 -- here it is. Now, where is this? It's not limited to the
13 Legal Services Corporation. Let's see. "If a federal
14 department or agency in any" -- let's see.

15 Okay, "Any auditor or monitor receiving federal
16 funds from the corporation or the recipient in any federal
17 department or agency and any and all records, reports,
18 documents, and papers, and other information available to the
19 recipient, including but not limited to information that is
20 subject to the attorney-client privilege, or attorney work
21 product."

1 I think that is just so broad that I would be
2 embarrassed that we would say that this is something we would
3 like to have written into the law.

4 And then I don't quite understand the implication
5 of the reservation. It says, "Information provided pursuant
6 to this section subject to the attorney-client privilege or
7 protections accorded the attorney work product shall not be
8 disclosed to any person or entity." Well, why would they
9 want it if they can't use the information? You know, why
10 should they be allowed to get the information but then it
11 says that they can't use it?

12 I just don't think that we should leave ourselves
13 in the position of having endorsed this. I now it's before
14 the board, it's incumbent on the board to take action.

15 I think we should accept the offer of Doreen on
16 behalf of the SCLAID and the ABA to work with the inspector
17 general, with the management of the corporation, the
18 representatives of the board, to work on a protocol and then
19 some enforcement mechanism.

20 And I think that may be very difficult. If someone
21 is adamant that they think they have privileged material,

1 they're not going to turn it over, and we honestly believe
2 that it is not privileged, you have to have a forum in which
3 to resolve that.

4 You know, so maybe you're talking about subpoena
5 power, or something like that. But this has to be thought
6 through and if there is to be legislation, it ought to go up
7 on the Hill in a form that we, as the board, approve and that
8 we can be proud of, which I was not.

9 CHAIR EAKELEY: Edna, then Bucky. Bill, did you
10 want to get back in, or --

11 MR. MCCALPIN: Yes.

12 CHAIR EAKELEY: You mind queuing up for it?

13 MR. MCCALPIN: I don't mind.

14 CHAIR EAKELEY: Edna?

15 MS. FAIRBANKS-WILLIAMS: Well, I guess I have to go
16 back like Bill did a number of years ago, when I first came
17 on to Legal Services and when we were first monitored.

18 All we did was blank out the name of the person.
19 They were allowed to know whether they were a housewife or a
20 farm worker, they were allowed to know whether they worked in
21 the factory or were black, or Indian, or white, or yellow, or

1 whatever. All we did was black-out the name and they were
2 allowed to look at anything else. What happened to that?

3 CHAIR EAKELEY: I don't know the answer.

4 MS. FAIRBANKS-WILLIAMS: That's what we did in
5 legal aid in Vermont. We just blacked out the name, and they
6 were allowed to look at the records.

7 MR. MCCALPIN: That is not acceptable to --

8 MS. MERCADO: It's not acceptable under attorney-
9 client privilege.

10 MR. MCCALPIN: It's not acceptable, no.

11 MS. FAIRBANKS-WILLIAMS: It's not acceptable now.

12 MR. MCCALPIN: Certainly not.

13 CHAIR EAKELEY: Bucky?

14 MR. ASKEW: Doreen doesn't need my defense, but let
15 me say, John, I don't think she said what you heard her say.

16 I think she said that we're hearing things from fewer
17 programs about what's being done. We're hearing things from
18 staff about what's being done, and they don't connect.

19 MS. DODSON: Right.

20 MR. ASKEW: So we ought to be in a fact-finding
21 mode. We ought to be finding out what the reality is, rather

1 than what is being said on either side. We're not accepting
2 that what fewer programs say is going on is actually what's
3 happening, but we need to find out exactly what is happening
4 so that we can then decide if that --

5 MR. MCKAY: I was responding to the comment that
6 Doreen made with regard to the scope of the information
7 requested by compliance and --

8 MR. ASKEW: That's what I'm responding to.

9 MS. DODSON: That's --

10 MR. MCKAY: Well, I don't think it's as broad as
11 she indicated.

12 MR. ASKEW: Well, we don't know. I mean --

13 MS. DODSON: All I said was we didn't know.

14 CHAIR EAKELEY: I want to get back to our agenda at
15 some point. We were on reports. We had some action items on
16 the agenda also, so --

17 MR. MCCALPIN: John, your staff sent to me
18 yesterday that they were demanding that the file be handed to
19 them, physically put in their possession, and let them look
20 at it, and I regard that as too broad and violative of the
21 legal norms.

1 MR. MCKAY: Well, I think that's the point Doreen
2 was making. And that --

3 MR. MCCALPIN: Yes, and your staff said that to me
4 yesterday.

5 MR. MCKAY: Well, I think Bill, that you could use
6 some additional information --

7 CHAIR EAKELEY: But I think that Bucky's point is
8 well taken, and I think that that's incorporated within the
9 sense that this is a complicated issue, fraught with
10 consequences on both sides, that needs to find a careful
11 recalibration, obviously, because it isn't working in all
12 circumstances. And we need to address it in a way that makes
13 it work without sacrificing the values on either side of the
14 balance. LaVeeda, and then Nancy, and then --

15 MS. BATTLE: I'd like to move that the
16 board --

17 CHAIR EAKELEY: Can we do this, Victor?

18 MS. BATTLE: I mean, we got something the public
19 has brought to us. I --

20 CHAIR EAKELEY: Yes, I don't know whether we can --
21 are we -- what can we -- I mean, what I'm looking for, is if

1 we have to schedule a telephone conference call on notice to
2 deal with it, to set this up for next week, or --

3 MR. FORTUNO: The subject matter of a meeting can
4 be amended here and now, but only if two conditions are
5 satisfied, which is there has to be a recorded vote -- the
6 corporation business requires it -- and that no earlier
7 notice was possible.

8 If the board feels that it can take a vote and
9 satisfy -- that those two conditions are satisfied, it could
10 then take it out, but not otherwise.

11 MS. BATTLE: I understand that this issue has come
12 to us by public comment and that we were not aware of the
13 nature of the full public comment until today. I would like
14 to have a recorded vote taken on this particular issue. If
15 I'll just get it on the floor, we can consider it.

16 CHAIR EAKELEY: Yes, let's make a motion.

17 M O T I O N

18 MS. BATTLE: I'd like to move that the board first
19 express its position that it does not support the present
20 legislative position that has been articulated in the letter
21 that was sent to Congress as its position, but that it is

1 willing to undertake fact-finding consideration of the
2 particular issue that is addressed in that legislative
3 proposal, and that the board will take appropriate action
4 upon completion of its investigation.

5 MR. MCCALPIN: I second.

6 MR. FORTUNO: I think, Mr. Chair, two votes would
7 be required. One is a procedural one, which would be that
8 corporation business retires it, and that no earlier notice
9 was possible. And if that then passes, then moving on to the
10 substantive votes. But I think that the preliminary vote is
11 a procedural one.

12 MS. BATTLE: I move the procedural vote on the
13 issue that this came to us today, we did not have an
14 opportunity for notice, but it is necessary for the board to
15 act on this while we are here today.

16 MR. MCCALPIN: I'd second it.

17 CHAIR EAKELEY: Explain to me why it is that we had
18 to take this up today, and why we couldn't have done this on
19 notice?

20 MS. BATTLE: Because I understand from at least
21 part of the --

1 CHAIR EAKELEY: I mean, we had a letter from Bill
2 two weeks ago -- three weeks ago.

3 MS. BATTLE: Well, because we're hearing that this
4 particular --

5 CHAIR EAKELEY: This is a railroad going on, and
6 there's no reason to do it today rather than next week. I'm
7 here. And I don't understand why there's a compulsion to
8 repudiate management's position on the record on something as
9 sensitive as this, when the IG has already told us that there
10 was a serious enough problem for him to have to go the Hill
11 immediately.

12 I mean, I think there are issues within issues, and
13 that we can -- and you articulated it perfectly in the sense
14 that we need to do fact-finding, but I mean, it's just a
15 gratuitous slap at management to push this to a vote. That's
16 just my -- and I don't understand procedurally how we can do
17 it in accordance with the act, because it's not simply
18 something that's been here today. We had written notice of
19 it.

20 MS. BATTLE: We didn't have written notice in my
21 view, Mr. Chair, in the nature of our responsibility for

1 legislative -- of consideration of any legislation before it
2 is taken to the Hill.

3 And it seems to me, based on at least one
4 representation that was made today, that there are continuing
5 dialogues around this, and we have not had an opportunity to
6 review it, we have not had an opportunity to sanction it.

7 I think that that's the reason for the expediency
8 in us at least expressing that it has not gotten that
9 approval as of yet, and that we are willing to do our fact-
10 finding, and make our own determination.

11 CHAIR EAKELEY: This is an IG proposal. The
12 Congress is in recess until December 2nd.

13 MR. MCCALPIN: No, it's an IG and management
14 proposal.

15 CHAIR EAKELEY: Not the language.

16 MS. BATTLE: Well, the statement on the letter that
17 went up said, "Management and IG" --

18 MR. MCCALPIN: Management had sent a memo to the
19 Hill saying it's management's proposal.

20 MS. MERCADO: And Mr. Erlenborn specifically
21 pointed out the problem with that.

1 MS. ROGERS: I don't think this is at all a slap at
2 management, but it is, from this point forward, being
3 represented as our view. We are the management of LSC. And
4 it isn't my view. You know, it is a new issue, I want to
5 hear more facts, but I have taught evidence and I've taught
6 privilege. It's an area of expertise for me. So even though
7 I've had a short time to read it, I do understand, I know how
8 you can work out of it.

9 Protocols, I know that it's often misunderstood and
10 over read, and that we can work through things and probably
11 come to a better understanding, but what I was seeking was a
12 statement that management will not represent that it is any
13 more supportive, that the corporation --

14 In fact, I'd like to see us repudiate the support
15 that was given to it prior, because from this point forward,
16 it's my support.

17 I recognize management acted quickly, and were
18 acting in our benefit, and I appreciate that they did that
19 and made the choices that could be made quickly, and I'm not
20 at all angry about that. But this is three weeks later, it
21 still is out there that the Legal Services Corporation

1 supported that, and it's now me. And it's all of us. And
2 I'd like to see the position reversed.

3 MS. MERCADO: So would I.

4 CHAIR EAKELEY: John, you want to respond?

5 MR. MCKAY: Sure. I'd be glad to. I think that is
6 a correct statement of my view, and I think it's a correct
7 statement of the inspector general's view, that the current
8 legislation is not acceptable. We need guidance from the
9 board as to how to move forward on this, and I'm welcoming
10 that.

11 What I can't say, Nancy, is I cannot say that I
12 would repudiate the process and the decision that I made to
13 support it on the window that we had. So that part I can't
14 agree with you on, but I certainly agree that the current
15 legislation -- and John's right.

16 It went up there with management and the IG
17 endorsing it, and that is not the current state of the
18 corporation's policy, and that should be corrected. But
19 there is an important distinction, which is I certainly urge
20 you not to pass a resolution that would look like you were
21 repudiating my conduct at the time that this went up to the

1 Hill. And I think that's very important and you really need
2 to know that.

3 CHAIR EAKELEY: Or our support for the IG on
4 complaints.

5 MS. MERCADO: The motion doesn't say that.

6 MR. MCKAY: Well, I'm telling you, as your
7 president, how this is sounding, and I'm urging caution,
8 please.

9 MS. ROGERS: I would take that to heart, and say I
10 was very supportive of our president, and we understand the
11 good work that he did. What I want to make clear is what our
12 position is from this point forward, in case it's still going
13 to be quoted that we are supportive of that.

14 CHAIR EAKELEY: Tom has a suggestion. I have
15 another one, also, which would be rather than a formal board
16 resolution, can we adopt a sense of the board, that the board
17 does not support the legislation currently pending, and
18 intends to move post haste to --

19 MR. MCKAY: What's the difference?

20 CHAIR EAKELEY: Or, and then there's Tom's other
21 suggestion.

1 MR. SMEGAL: It's Robert's Rules, and it provides
2 for any entity to reconsider an action taken, without
3 repudiating it, but reconsider it. And that's certainly
4 clear in Robert's Rules of Order. We could have a motion
5 before us to reconsider a prior act of this board, which
6 occurred through our authorized entity, the president in this
7 particular case.

8 MR. MCCALPIN: But there is no prior act of this
9 board to reconsider.

10 MR. SMEGAL: Sure.

11 CHAIR EAKELEY: No, the chair --

12 MR. SMEGAL: In our absence, the chair has met with
13 management, and decided to do something. And we are going to
14 reconsider.

15 MR. MCCALPIN: Well, that's not an act of the
16 board.

17 CHAIR EAKELEY: Well, how do you feel about, I
18 mean, some expression that the board does not support the
19 legislation, and intends to --

20 MS. BATTLE: That's what I said to start with. I
21 never made a statement about whether management and the IG

1 had a legitimate issue that they're taking to get addressed.

2 It was simply that the legislation itself --

3 CHAIR EAKELEY: Does not have the support of the
4 board?

5 MS. BATTLE: Does not have the support of the
6 board, that the board wants to undertake fact-finding to look
7 into the issue, and to tender appropriate legislation to
8 address it.

9 CHAIR EAKELEY: Can we convert that? Would you be
10 comfortable converting that into a sense of the board that's
11 reflected in the minutes?

12 MR. MCCALPIN: What's the difference?

13 CHAIR EAKELEY: It deals with my modest procedural
14 problem of an action taken. I mean, a sense of the board --

15 MS. MERCADO: Consensus.

16 CHAIR EAKELEY: -- expressed in the minutes that
17 says that the board does not support this legislation is not
18 action taken by the board, but --

19 MS. MERCADO: But is you're asking for a consensus,
20 consensus is still action.

21 MR. MCCALPIN: I think you still have to have the

1 preliminary --

2 MR. SMEGAL: Oh, sure.

3 CHAIR EAKELEY: Yes, I'll give that, but I just --

4 MR. SMEGAL: It's got to be unanimous, too.

5 MR. ERLENBORN: But a sense of the board resolution
6 does not carry quite the weight, I guess, as if we went and
7 officially reversed what was done by the administration.

8 But I think the sense of the board resolution will
9 effectuate what we all want, and that is to go on the record.

10 I think it should be supported.

11 MS. MERCADO: It's a consensus of the board.

12 MR. ERLENBORN: Let me say one other thing, if I
13 might. I would hope that neither the IG -- and of course,
14 this is up to him -- nor our administration would ever follow
15 this kind of legislative endeavor. Putting something on an
16 appropriation bill that has already gone through conference,
17 and amending the conference report, never considering this in
18 committee, never considering it on the floor of the House or
19 the Senate.

20 Now I know that when you're in a hurry it seems
21 like a very handy way of doing it, but this is not a good

1 legislative practice, to put things in at the last minute, in
2 legislation, when there are maybe just hours or days left in
3 a session and hardly anyone in the Congress would even know
4 that it had been done. And I don't like to see this
5 corporation follow that kind of practice.

6 CHAIR EAKELEY: Okay. Now procedurally, if we're
7 back on the motion that LaVeeda made to do what? What was --

8 MS. BATTLE: The first one was just for us to
9 consider this as an emergency measure, and I've already
10 articulated that I wish somebody could read it back from the
11 record, because I don't remember --

12 CHAIR EAKELEY: If I can restate it, it's to vote
13 whether to consider and adopt with a friendly amendment a
14 resolution of the board that the board does not support the
15 legislation that --

16 MR. MCCALPIN: No, that's not the motion. The
17 motion was to put it on the agenda.

18 CHAIR EAKELEY: No, but we're voting whether to
19 vote for it.

20 MR. FORTUNO: I think that the procedural vote
21 would be whether the agenda should be amended --

1 MS. BATTLE: That's right.

2 MR. FORTUNO: -- to include an item which
3 corporation business requires be taken up at this meeting,
4 and of which no earlier notice could have been given.

5 M O T I O N

6 CHAIR EAKELEY: There was a motion, and then there
7 was a second from Mr. McCalpin. All those in favor?

8 (Chorus of ayes.)

9 CHAIR EAKELEY: All those opposed?

10 (No response.)

11 CHAIR EAKELEY: All right. It had to be unanimous,
12 right? Okay, now restatement of the issue to be presented.
13 Would you, would the board consider a resolution that it is
14 the sense of the board that the board does not support the
15 legislation submitted by the inspector general, and intends
16 to investigate the issues involved and take appropriate
17 action at the next meeting or interim meeting?

18 MR. MCCALPIN: I think it's wrong to put all the
19 onus on the inspector general.

20 MS. MERCADO: I think so, too, because it's going
21 up as both.

1 MR. MCCALPIN: It's a joint effort of the
2 management --

3 CHAIR EAKELEY: Well, whatever way you want to
4 describe the legislation.

5 MS. MERCADO: Just the legislation that went up to
6 the Hill, without putting it on anybody.

7 CHAIR EAKELEY: Do we have a name for the
8 legislation?

9 MS. MERCADO: What's it called?

10 MR. MCKAY: Oh, I could come up with one now.

11 (Laughter.)

12 MR. FORTUNO: You may be able to refer to it by
13 date, "Proposed legislation submitted to the Congress on --"

14 CHAIR EAKELEY: John suggests that when -- we're
15 about ready for a break anyway, but if you want to take a
16 break, we could tinker with the language so that we get
17 something that works. Okay, 10 minute recess.

18 (A brief recess was taken.)

19 CHAIR EAKELEY: All right, please, I know
20 semblances are what they are, but could we come back to a
21 semblance of order?

1 Okay, LaVeeda, could you --

2 those?

3 MS. BATTLE: I'd like to reinvent --

4 MR. ERLNBORN: Might I offer a motion to put this
5 on the agenda?

6 MS. BATTLE: We already did that. It is now on the
7 agenda.

8 M O T I O N

9 MS. BATTLE: And following our discussion, I'd like
10 to move that the board reaffirm its support for access to
11 records that are necessary for the work of both the inspector
12 general and our compliance division, as well as for our
13 accountability to -- the corporation -- to Congress, but that
14 the board does not support the current legislative proposal
15 addressing this issue of access to records, and that it will
16 explore this issue and take further action as it deems
17 appropriate.

18 CHAIR EAKELEY: Second?

19 MR. ERLNBORN: Second.

20 MR. MCCALPIN: Wait a minute. Do we support access
21 to data irrespective of whether that data may be protected by

1 an attorney-client privilege --

2 MS. BATTLE: No.

3 MR. MCCALPIN: -- or rule of confidentiality.

4 CHAIR EAKELEY: I don't think we do, but I don't
5 think you need --

6 MS. BATTLE: That's why I said as necessary to
7 perform the responsibilities of the inspector general's
8 office and compliance. However, this particular proposal we
9 do not support.

10 MR. ERLNBORN: We will support whatever it is we
11 support, and I don't think we have to prejudge that.

12 CHAIR EAKELEY: All those in favor?

13 (Chorus of ayes.)

14 CHAIR EAKELEY: All those opposed?

15 (No response.)

16 CHAIR EAKELEY: Yes, yes, we'll get it -- Bucky,
17 go. I'm sorry.

18 MR. ASKEW: I was going to ask if the motion
19 anticipated that we are authorizing our management to
20 continue interacting with the inspector general around these
21 issues in the interim. I mean, we're not foreclosing our

1 management's --

2 CHAIR EAKELEY: That's a management prerogative. I
3 mean, we have to --

4 MS. BATTLE: Can I clarify my motion? It is only
5 to deal with this legislative proposal. It is not to deal
6 with the ongoing relationship between our management and the
7 inspector general.

8 CHAIR EAKELEY: And access and compliance.

9 MR. MCKAY: I would just take that, if I might
10 LaVeeda, just kind of take that one step further, and say
11 that given the resolution, that we would expect to engage in
12 any dialogue around this issue with board participation, to
13 the extent it involves additional policy in the form of
14 legislation.

15 So however that occurs through board participation,
16 we would welcome --

17 CHAIR EAKELEY: Well, we're going to clearly follow
18 up. Doreen, thank you very much. We look forward to --

19 MS. BATTLE: Did we take a vote?

20 CHAIR EAKELEY: Yes, yes.

21 MS. BATTLE: Oh, we did? Okay.

1 CHAIR EAKELEY: We look forward to further
2 protocol. Thank you. We should move on with the agenda.

3 MS. DODSON: Thank you very much. I appreciate the
4 opportunity, and appreciate Mr. Erlenborn's invitation to
5 work with you.

6 MS. BATTLE: I'm sorry. Just for the record, could
7 you record the vote? We took the vote, but nobody ever said
8 whether we voted for or against.

9 CHAIR EAKELEY: Okay. Let the record reflect that
10 every director present and in attending voted in the
11 affirmative.

12 MR. ERLENBORN: It's supposed to be unanimous,
13 isn't it?

14 CHAIR EAKELEY: That's called unanimous.

15 MS. DODSON: Thank you.

16 CHAIR EAKELEY: LaVeeda, the report of the board's
17 operations and regulations committee?

18 MS. BATTLE: Okay, the operations and regulations
19 committee of the board met on yesterday, and we considered it
20 -- took action on several items.

21 We had a 10-item agenda. We considered 9 of those

1 items. We considered, first of all, 45 CFR 1628 of the
2 recipient fund balance as a final rule. In it, there were
3 two issues that we had to address.

4 One was the issue of whether to continue the 10
5 percent carryover without corporation approval with a 25
6 percent opportunity for programs to request a waiver of the
7 10 percent cap.

8 And the second issue was a certain extraordinary
9 circumstance that we had factual information to show that
10 they've happened in the past, and how we would have rested
11 with regard to prospective regulation.

12 We've, in doing so, considered the proposals that
13 came before us from both our management and from CLASP very
14 carefully, and actually the board came up with its own
15 proposal, ultimately, and you should have a copy of it before
16 you.

17 In the proposal that we ultimately entered, we
18 entered language that would allow for a waiver of the 25
19 percent cap in only three specific circumstances. One is
20 when there were insurance proceeds received, secondly, if
21 there were proceeds received as a result of the sale of real

1 estate, and thirdly, proceeds received as a result of a
2 lawsuit in which the recipient was a party.

3 And the final rule is before you. It has the
4 language in it that addresses both the standard cap that we
5 have of the 25 percent, waiver cap, and a 10 percent cap for
6 consideration of the fund balance.

7 CHAIR EAKELEY: And you can bring that into a
8 motion?

9 M O T I O N

10 MS. BATTLE: Yes, I'd like to so move that this
11 become the final rule 45 CFR 1628 on the issue of recipient
12 fund balance.

13 MR. MCCALPIN: Second.

14 CHAIR EAKELEY: Any further discussion? All those
15 in favor?

16 (Chorus of ayes.)

17 CHAIR EAKELEY: All those opposed?

18 (No response.)

19 CHAIR EAKELEY: The ayes have it. The motion
20 carries.

21 MS. BATTLE: The second issue that we considered

1 that was regulatory had to do with 45 CFR 1635, the issue of
2 timekeeping for part-time attorneys that work both for our
3 recipients, or sub-recipients, and as well for entities that
4 are involved in restricted activities.

5 We decided that we would use a methodology of
6 quarterly certifications to be received from those persons
7 who fall into that category, rather than trying to get into
8 extensive timekeeping actual records on a day-to-day
9 business.

10 And we made a determination that as long as those
11 quarterly certifications are in conformity with the rule,
12 then that information would be available to anyone going into
13 an audit to determine whether or not any attorney who is
14 employed on a part-time basis is engaged in doing work that
15 is restricted, while on the clock for any of our programs.

16 A copy of that should also be before you on
17 timekeeping.

18 M O T I O N

19 MS. BATTLE: And I would so move its adoption now
20 as a final -- it's not out for comments, we've gotten the
21 comments -- this is the final.

1 CHAIR EAKELEY: That's a motion?

2 MS. BATTLE: Yes.

3 MR. ERLNBORN: Second.

4 MS. WATLINGTON: Second.

5 CHAIR EAKELEY: Any discussion? All those in
6 favor?

7 (Chorus of ayes.)

8 CHAIR EAKELEY: Opposed?

9 (No response.)

10 CHAIR EAKELEY: The ayes have it. The motion
11 carries.

12 MS. BATTLE: The third item that we discussed has
13 to do with a property manual, acquisition procedures and
14 property standards. This is our first cut glance at that, so
15 we don't have anything specific to present to the board.
16 This is not action item for the board, but we did review the
17 property manual, and we made several revisions to it
18 yesterday.

19 It will be going out for public comment and after
20 we've had an opportunity to review the public comments and
21 render a final determination, we will bring it back to the

1 board for its adoption.

2 The other item that we considered on yesterday has
3 to do with a regulation that we had previously approved once
4 the Freedom of Information Act had been amended to allow for
5 electronic transmission of FOIA information.

6 One of the requirements of that regulation is that
7 we also have the responsibility of having an FOIA handbook on
8 the web. And we have, as part of the package that we had
9 before the committee, a very well done manual, and it looks
10 very user-friendly.

11 That was done by a law student who has been working
12 with us. We reviewed it, it contains the regulatory
13 information that we promulgated earlier under the FOIA
14 regulation, and any other directive information to assist a
15 person in understanding how to access our FOIA information on
16 the web.

17 M O T I O N

18 MS. BATTLE: So we move its approval now by the
19 board, so that it could be put on the web and made available
20 to the public for purposes of at least another alternative
21 way to make FOIA requests.

1 MR. ERLNBORN: Second.

2 CHAIR EAKELEY: Any discussion?

3 (No response.)

4 CHAIR EAKELEY: I just wanted to say that this is
5 nice, this is --

6 (Laughter.)

7 CHAIR EAKELEY: All those in favor?

8 (Chorus of ayes.)

9 CHAIR EAKELEY: Opposed?

10 (No response.)

11 CHAIR EAKELEY: The ayes have it.

12 MS. BATTLE: Okay, and the third, the final issue
13 that we considered on yesterday has to do with a proposed
14 program of cash awards to corporation employees in
15 recognition of their outstanding performance.

16 M O T I O N

17 MS. BATTLE: We had a very lively discussion about
18 this one yesterday, and made the determination that we would
19 move to recommend to the board that it adopt an award program
20 that excludes two of the things that were in the proposal
21 that we received. That would be the LSC image award and the

1 personal achievement award.

2 And also, we recommend that it exclude as
3 recipients of the awards the officers of the corporation, the
4 president, and the inspector general.

5 The final caveat that we have is that in looking
6 through the proposal, the selection committee did not have,
7 actually, a set out for how the IG would organize its
8 selection committee.

9 And before it's actually published in the manual,
10 we were hoping that the inspector general could provide us
11 with how the selection committee would work on his side.

12 With those caveats, the proposal as presented and
13 amended is moved for adoption -- why don't you make it for
14 adoption by board?

15 CHAIR EAKELEY: Is there a second?

16 MR. ERLNBORN: Second.

17 CHAIR EAKELEY: Ed, you want to come up and provide
18 a word of explanation?

19 MR. QUATREVAUX: Well, two points. I just want to
20 tell you it's unnecessary to deal with that, in as much as
21 four years ago I renounced any cash awards because of the

1 appearance of conflict of interest.

2 Secondly, as to how it's going to work in the OIG,
3 we're a small organization. We're not going to form a
4 committee. I'm a committee of one, so --

5 MS. BATTLE: Well, that's fine. Just as long as
6 it's articulated in there.

7 CHAIR EAKELEY: Tom, did you have a question?

8 MR. SMEGAL: Yes, I did. Just a technical
9 question. If I understood the motion, it's that the bonuses
10 don't apply to the president, the IG, and officers of the
11 corporation.

12 These bonuses are for the -- what year? The year
13 1999, or Fiscal Year 1999?

14 MR. MCKAY: Yes.

15 MR. SMEGAL: So actually -- does it exclude to the
16 extent that those who were in offices subsequent to that
17 time, or are they eligible?

18 MR. MCKAY: It would be for Fiscal Year 2000, I
19 think. It would be --

20 MS. MERCADO: It's not going to be retroactive. It
21 will be --

1 MR. SMEGAL: But their bonus is based on the funds
2 we had available for the Fiscal Year 1999, right?

3 MR. MCKAY: No, it would be Fiscal Year 2000.
4 That's --

5 MR. SMEGAL: Oh, we're not doing it for --

6 MR. MCKAY: We'll move forward. I don't think that
7 the procedure rules out recognizing accomplishments during
8 calendar year or Fiscal Year 1999, but the funds now come out
9 of Fiscal Year 2000.

10 MR. ERLENBORN: I understood Joan Kennedy to tell
11 us that money was set aside in 1999 -- in the current budget.

12 MR. MCKAY: Which would be Fiscal Year 2000. I
13 just --

14 MR. ERLENBORN: But it would be based upon
15 activities of the employees in the prior fiscal year, that is
16 1999.

17 MR. MCKAY: That is possible, depending on what --

18 MR. ERLENBORN: Because early next year is when she
19 was --

20 MR. MCKAY: -- respective -- the schedule based on
21 past activities.

1 MR. ERLNBORN: Next month's -- well, okay.

2 MR. MCKAY: Yes. If the funds were to come out of
3 Fiscal Year 2000, if the board approves, and the nominations
4 committee recommends someone, yes, I think that they could be
5 recognized for accomplishments in 1999 or earlier, frankly.

6 MS. BATTLE: Let me just make clear that there was
7 an award, a cash award program, already existing within the
8 corporation, and that program, it seemed to me, would apply
9 to the time frame up until we make this determination
10 prospectively, as to how this is all to work.

11 So if you're talking about activities that took
12 place while the previous cash award program was in place,
13 then I would think that you could make awards consistent with
14 that. If you're talking about activities from this day
15 forward, then the new program is what's in place for that.

16 MR. SMEGAL: Well, I guess my question has two
17 parts, and I wasn't very clear on that. I was more concerned
18 about those who were not officers during the operative time
19 period who, if I understand correctly, would be ineligible if
20 they were then officers.

21 And I am suggesting to you, are those who were not

1 officers in the eligible time period eligible for these
2 bonuses, and I --

3 MR. MCKAY: Well, I think the board -- I'm sorry,
4 Tom.

5 MR. SMEGAL: It seems to me that's appropriate. I
6 mean, I would amend this motion, if necessary, to have that
7 happen.

8 MR. MCKAY: I wasn't at ops and regs for this
9 discussion --

10 MR. SMEGAL: I wasn't either.

11 MR. MCKAY: -- and I apologize for that, but I -- I
12 believe I was over in provisions -- and I don't understand,
13 and I think it was --

14 MR. ERLENBORN: Well, I offered the motion, and it
15 was my understanding of my motion that it was to disqualify
16 for an award anyone who was an officer at the time the award
17 was made.

18 MR. MCKAY: Yes, and I think that's how I would
19 read the resolution.

20 MS. WATLINGTON: Another clarification would be we
21 go from the 5 to the 10 in the restated --

1 MS. BATTLE: We just state that the amounts as
2 disclosed, because there were some gradations of differences,
3 and there is also a provision within the proposal for group
4 awards. And so for that reason, the amounts stay the same,
5 the exclusions were the only differences in what we were
6 presented.

7 CHAIR EAKELEY: My understanding, second hand, of
8 the decision by the committee to exclude officers had nothing
9 to do with, or should not be construed in any way, as meaning
10 that we hold them in anything less than the highest esteem
11 and appreciation for all their work.

12 MR. ERLNBORN: I second the motion.

13 MS. BATTLE: Absolutely, absolutely. That was
14 clear, and I really should have used that as a predicate to
15 the changes to this program. We feel that our staff has done
16 an outstanding job, and that they are to be commended for it,
17 and in making this determination, it was simply the decision-
18 makers come out of that group, the top managers and the
19 president, and in order for the program to work, to award for
20 what's being done by the rest of the staff, that was the
21 judgement of the committee.

1 CHAIR EAKELEY: Any further questions? Discussion?

2 Hearing none, all those in favor of the motion?

3 (Chorus of ayes.)

4 CHAIR EAKELEY: Opposed?

5 (No response.)

6 CHAIR EAKELEY: The ayes have it. The motion
7 carries.

8 MS. BATTLE: Okay. That's my report.

9 CHAIR EAKELEY: Thank you. A lot of work. Thank
10 your committee. Next we have another Erlenborn report. This
11 time, the board's annual -- I'm sorry, Bucky, what happened
12 to Bucky?

13 MR. ERLENBORN: He'll be back.

14 CHAIR EAKELEY: Okay, why don't we skip to the
15 report of the board's annual performance reviews committee?

16 MR. ERLENBORN: Well, I can report that yesterday
17 we had private interviews with the president and the
18 inspector general. All of the board members have recently
19 received forms to fill out and information as to their
20 feelings about the performance of those two officers, and
21 those forms, I think, we asked to be completed and sent in to

1 our staff by the 20th. That's the day.

2 Let me say that I am amending that, and please get
3 them in some time next week. And we will then complete the
4 process.

5 CHAIR EAKELEY: Please get them in next week, and
6 don't just check the boxes, but provide an explanation, if
7 you can, because that will help the committee in the process
8 of formulating the reviews.

9 We have next to consider an act on the board of
10 directors' semi-annual report to the Congress. Many of us
11 did not get that until today, and I'm just wondering what the
12 board's preference would be. My inclination now would be to
13 try and schedule a very brief telephone conference call
14 before the end of the month --

15 MS. BATTLE: That would be fine.

16 CHAIR EAKELEY: -- and deal with it that way, as we
17 have in the past.

18 MR. MCCALPIN: I offered some suggestions for a few
19 minor changes to Sue McAndrew yesterday. I don't know
20 whether the board has them or not.

21 CHAIR EAKELEY: Sue, come on up.

1 MS. MCANDREW: The versions that you have do not
2 include those changes, but before you leave today, I could
3 get you versions --

4 CHAIR EAKELEY: That would be great, or we can just
5 circulate them. I'm thinking that we'll try and -- this
6 coming week is Thanksgiving week. I'm thinking
7 we should try and do something, really, the following week,
8 which would make it the week of the 29th. You'd have to do
9 it the 29th, but would that be too short a turnaround to get
10 it done? Or how about the Friday after Thanksgiving, Friday
11 the 26th?

12 MS. MCANDREW: The corporation is closed.

13 CHAIR EAKELEY: Closed, right. Maybe charge
14 Elizabeth, or we'll get back in touch.

15 MS. BATTLE: What date are we talking about? The
16 30th?

17 CHAIR EAKELEY: I think we'll have to canvas the
18 board, and we'll get some of the staff to do that and find
19 out the least mutually inconvenient time as possible to do
20 that.

21 Okay, so that's where we are on that item. Why

1 don't we move right into closed session, and then come back?

2 We need to pick up Bucky's report on provisions when he re-
3 emerges. But in the meantime, why don't we just proceed
4 through?

5 MR. ERLNBORN: You want a motion?

6 CHAIR EAKELEY: Yes, thank you John. I need a
7 motion to call go into closed session for the purpose of
8 reaching the agenda items.

9 M O T I O N

10 MR. ERLNBORN: I move that the board now go into
11 closed session to serve the notice and statute of rules, and
12 for the purpose of having an interview with the inspector
13 general.

14 MS. FAIRBANKS-WILLIAMS: Second.

15 CHAIR EAKELEY: All those in favor?

16 (Chorus of ayes.)

17 CHAIR EAKELEY: Opposed?

18 (No response.)

19 CHAIR EAKELEY: The ayes have it. Maybe 10 or 15
20 minutes, public.

21 (Whereupon, at 12:44 p.m., the meeting was

1 adjourned to closed session.)
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1 CHAIR EAKELEY: While the public is being brought
2 in, Victor, you stay there, please.

3 MR. FORTUNO: I was just going to -- oh, okay --
4 shut the door.

5 CHAIR EAKELEY: Susan just circulated a draft of
6 the resolution that LaVeeda offered, but as Victor pointed
7 out, it is not complete. It doesn't reflect the motion that
8 was offered that we voted on, and my proposal was simply to
9 ask Victor and Sue to go back and get the transcript, and
10 faithfully record the motion as we voted on it.

11 MS. BATTLE: Yes. That's fine.

12 MS. MERCADO: Yes. So in other words, you're going
13 to have a long discussion on this.

14 CHAIR EAKELEY: Have another two hours.

15 MS. MERCADO: You know why? It's because he --

16 CHAIR EAKELEY: And then he just wants to get his
17 point in again that he wasn't able to get in the first time
18 around, because we were too exhausted by the process.

19 MR. MCCALPIN: Who does, me?

20 CHAIR EAKELEY: Bill.

21 MR. MCCALPIN: Oh, Bill. I just want to change the

1 last three words.

2 CHAIR EAKELEY: Yes, "by the OIG." That's correct.
3 That was not the resolution we passed.

4 MR. FORTUNO: We'll just take the transcripts and
5 conform it.

6 MR. SMEGAL: Delete that?

7 MR. MCCALPIN: Yes, I would say, "from the
8 corporation."

9 CHAIR EAKELEY: Okay, yes.

10 MR. SMEGAL: What is that saying?

11 CHAIR EAKELEY: Well, Victor's got it.

12 Item 16, consider an act on the resolution
13 authorizing the president to enter into employment agreements
14 with officers of the corporation.

15 MR. SMEGAL: We need a motion.

16 CHAIR EAKELEY: We need, I think, maybe an into by
17 John. Or I can do it. You want me to --

18 MR. MCKAY: Why don't you --

19 MR. SMEGAL: Will we be needing a motion?

20 CHAIR EAKELEY: Yes, we will need a motion.

21 M O T I O N

1 MR. SMEGAL: I'll move.

2 MS. FAIRBANKS-WILLIAMS: I'll second it.

3 MR. MCKAY: I think, actually, the board members
4 were provided with contracts.

5 CHAIR EAKELEY: Given out yesterday, yes.

6 MR. MCKAY: Okay, thank you. The purpose of the
7 resolution, with regard to employment contracts, or a
8 proposal by me to amend the personnel manual to allow me to
9 enter into employment contracts with officers of the
10 corporation, and again, as I had previously briefed the
11 board, the purpose is to have, during anticipated periods of
12 transition, employees of the corporation reporting to
13 managers other than the president who are under contract.

14 Two main issues were considered here. One, that
15 the contracts themselves not be entered into for a period
16 which was deemed to be the likely tenure of this board. And
17 I think the sense was that the board would not be in a
18 position of mandating to a future board on election of a new
19 President of the United States and appointment of the board,
20 who the management staff would be, but that during what was
21 considered to be important transitions, including the

1 election of a new president, and the expiration of my term,
2 depending on when that would occur, that it would be
3 beneficial to the stability of the organization to have the
4 officers under contract.

5 And you were given a draft contract of it. I don't
6 think the purpose is to approve the contracts here, but to
7 give you something to look at, in terms of what I had in
8 mind.

9 I think the terms of the contract would be -- I
10 think the draft that you saw had them mid-year 2001 and --

11 MR. MCCALPIN: Two.

12 MR. MCKAY: -- I'm sorry, 2002 -- but that the
13 objective would be to go to January 1, 2002. Is that right?

14 CHAIR EAKELEY: Yes.

15 MR. MCKAY: Yes.

16 CHAIR EAKELEY: The thinking being that that's
17 probably the earliest that a next board could even come close
18 to having a new president and that board would want a
19 continuity of management through that process.

20 MR. MCKAY: Essentially you're getting my -- and
21 the other concept would be that if there were a new -- either

1 a new president or a new board prior to that time, since the
2 actual buy-out provision is on a declining rate, that it
3 would not be burdensome to the corporation to buy it out.

4 And the judgement that I was offering was that in
5 keeping -- that we wanted to keep stability in management,
6 and not look at wholesale staff changes based on perceptions
7 by employees that there might be significant change. And
8 therefore, the presentation.

9 I think you have dedicated officers and leaders in
10 the corporation. There is no indication to me that people
11 are planning to jump ship, but I think this is a reasonable
12 signal to the rest of the employees that they can look
13 forward to stability as this board completes its duties.

14 CHAIR EAKELEY: One other thing we've discussed in
15 the past, and that is the desirability of being able to offer
16 an employment contract to the new vice president of
17 operations, who will be coming new into this setting.

18 And if that is desirable, indeed necessary to
19 attract someone, then it's kind of unfair to the other
20 officers not to have a similarly worded contract at the same
21 level of the organization. LaVeeda?

1 MS. BATTLE: I have just, you know, my view is when
2 we first became a board, we had one employee who was under
3 contract, and that employee's contract lapsed and then we
4 went into a situation where all of our employees are
5 essentially at will.

6 And I worry about the wisdom of having contracts,
7 because at the end of those terms, the question becomes then
8 what do you do? Does the next board, then, continue
9 contracts, or are those employees continued at will, and I
10 was opposed to either not renewing the contract as it was
11 initially, and I don't know that I want to put the next board
12 in that situation with all of these officers. So I'm not for
13 having contracts.

14 CHAIR EAKELEY: There are competing considerations
15 all the way around, I suppose. I come down ultimately to
16 realization and appreciation of the fact that we have a quite
17 extraordinary management team, who I hope would stay,
18 regardless. But it's as important for the people working for
19 them to know that their direct reports up are assured of
20 continuity, notwithstanding changes that they perceive to be
21 likely to happen at the board level than not.

1 And that was really the recommendation of
2 management and the thrust of it. And to the extent to which
3 it further tells this management team we really appreciate
4 what you're doing and hope to see you remain, I think that's
5 a very positive message too.

6 And I don't think we're tying the hands of the next
7 board by doing it this way, and Victor advised us in the past
8 that at other transitional moments in the life of the
9 corporation, contracts have been adopted to ease through
10 those transitional periods. Not to extend contracts beyond
11 the expected life of the board, though. Bucky?

12 MR. ASKEW: LaVeeda, if I heard you correctly, I
13 think your question may be answered by paragraph three, which
14 said, "Should the person continue his or her employment
15 beyond June to be on an employment at will basis?"

16 So I think your question is addressed by saying
17 they will automatically shift to employment at will on that
18 date. It may not deal with your bigger concern, but I think
19 that is specified in here, what happens.

20 MS. BATTLE: That's helpful.

21 MS. MERCADO: Would that need to be changed to

1 January 1?

2 CHAIR EAKELEY: Yes, we'll we're not adopting,
3 we're not approving the contracts, that's going to be up to
4 the president. But we are -- but I think the proposal is --
5 I mean, first off, the concept is contract terms no longer
6 than the likely tenure of board and successor board coming.

7 We want to be able to have a successor board come
8 in with stable, experienced management, and then have that
9 board decide first, on a new president, and be able to do
10 that while you still have the stability of management, and
11 then decide for themselves where to go from there.

12 So the idea is resolution authorizing employment
13 agreements for no longer than that term, but we estimate a
14 good cutoff would be January 1, 2002, and that would meet the
15 sense of the authorization.

16 MR. SMEGAL: Assuming for some reason unbeknownst
17 to us, that one of your officers prefers to remain at will,
18 is there an obligation to sign this?

19 MR. MCKAY: Oh, no.

20 MR. SMEGAL: Okay.

21 MR. MCKAY: Absolutely not.

1 MS. WATLINGTON: Clarification. The motion and
2 second made, we're doing discussion, we just didn't vote?

3 CHAIR EAKELEY: Yes. Correct, we're in the middle
4 of discussion. Any other discussion?

5 MS. MERCADO: And maybe Bill may know the answer to
6 this better, because I didn't look, are we authorized, as a
7 board, to do these employment contracts of all the officers
8 other than the president?

9 MR. MCCALPIN: Authorizing the president to make
10 the contracts for the other officers.

11 CHAIR EAKELEY: That is correct.

12 MR. MCCALPIN: In the name of the corporation.

13 CHAIR EAKELEY: The corporation, right. And that's
14 what --

15 MS. MERCADO: So we're doing indirectly, but we're
16 not allowed to do directly?

17 MR. MCKAY: No, we're amending.

18 MR. MCCALPIN: Why are we not allowed to do --

19 MS. MERCADO: Well, I'm asking you.

20 CHAIR EAKELEY: It's in the personnel policy
21 manual.

1 MS. MERCADO: That the board can set contracts with
2 officers of the corporation?

3 MR. MCCALPIN: The only area in which the concept
4 of a contract flies in the face of the norms is the at will
5 provision and the personnel policy. And we are, in effect --

6 CHAIR EAKELEY: Making an exception to it.

7 MR. MCCALPIN: -- making an exception to that, for
8 these contracts. We can do that. We can modify the
9 personnel policy any time we want.

10 MR. SMEGAL: I move the question.

11 CHAIR EAKELEY: Question's moved. Is there a
12 second to moving the question?

13 MR. ASKEW: Second.

14 CHAIR EAKELEY: All those in favor of moving the
15 question, that is, cutting off debate?

16 (Chorus of ayes.)

17 CHAIR EAKELEY: Opposed?

18 (No response.)

19 CHAIR EAKELEY: The question has been moved and all
20 those in favor of adopting the resolution authorizing the
21 president to enter into an employment agreements with

1 corporation officers say aye.

2 (Chorus of ayes.)

3 CHAIR EAKELEY: Opposed?

4 (Chorus of noes.)

5 CHAIR EAKELEY: Two nays, LaVeeda and Maria Luisa.

6 The ayes have it. And the resolution passes.

7 Next, we have consider and act on other business.

8 And one item that is before us is the schedule for the June

9 2000 board meeting in Minneapolis.

10 There's a memo that it's basically we got a
11 conflict that creates a problem. Tom?

12 MR. SMEGAL: I would suggest that there's another
13 alternative to this. I, for one, cannot make the alternative
14 date -- as I'm not able to make the proposed alternative date
15 for April 14 that you rescheduled after the September
16 meeting.

17 And I would propose that I blocked off this
18 weekend, and I would propose that we meet, rather than Friday
19 and Saturday June 23, 24, that we just move it to Sunday,
20 Monday, the 25th, 26th, which is the same weekend, in the
21 context of my thinking.

1 MR. ASKEW: I have a conflict with the 23rd, 24th,
2 so I wasn't going to be able to come to that one anyway. But
3 I could come to a Sunday/Monday meeting if you made it
4 whatever that is, 25th/26th.

5 MR. SMEGAL: Is the problem the local programs
6 couldn't --

7 CHAIR EAKELEY: The problem is the state bar in
8 Minnesota is meeting in Duluth, and all the local programs
9 are going to be there. They're very active in the state bar.
10 They came to me at the NLADA meeting and I discussed this
11 with the executive director of the Minneapolis program.

12 They want to be at our meeting, and they have an
13 obligation to be at the state bar meeting in Duluth at the
14 same time.

15 MR. SMEGAL: But Monday would be okay?

16 CHAIR EAKELEY: Monday's fine. Their meeting ends
17 on Saturday.

18 MR. SMEGAL: You do not want to go to Duluth if you
19 --

20 CHAIR EAKELEY: Now, now. Is Sunday and Monday all
21 right with everyone? And John indicates he thinks we can do

1 this from --

2 MR. MCKAY: Well, I just want to say for the
3 board's consideration that the board meetings, the away board
4 meetings, it's very difficult to get attendance on
5 Sunday/Monday by interested individuals.

6 In this case, obviously, we won't get bar
7 officials, because they'll be in Duluth.

8 MR. SMEGAL: No, they'll be back.

9 MR. MCKAY: I mean in the current schedule, so that
10 weighs in favor of the Sunday/Monday schedule, although you
11 should be aware, very difficult to get other officials on
12 that kinds of a schedule. So it's just something for you to
13 weight.

14 CHAIR EAKELEY: On the other hand, we pick up Bucky
15 and as long as we have, I mean, access to programs --

16 MS. FAIRBANKS-WILLIAMS: And you'd make me happier.

17

18 MS. BATTLE: Are you happier with Sunday/Monday?

19 MS. FAIRBANKS-WILLIAMS: Yes.

20 CHAIR EAKELEY: Well, in that case, why is there
21 ever even a question of what we should do?

1 MR. SMEGAL: And I started off saying, in other
2 words, we should --

3 MS. FAIRBANKS-WILLIAMS: It would have been very
4 tight scheduling for me, because I had to --

5 CHAIR EAKELEY: So, yes.

6 MR. MCKAY: So that's up to you, now.

7 MS. MERCADO: We'll schedule in some worship time?

8 CHAIR EAKELEY: Yes, definitely. We'll have some
9 work in some worship time and do the Sunday/Monday, and
10 indeed again, as we've been going out of town, we've been
11 adding another half day if and when we can to spend some time
12 with meaningful site visits.

13 MS. MERCADO: Well, I would rather do that on a
14 Saturday than on a Tuesday.

15 MR. SMEGAL: They're not going to be there.
16 They're in Duluth.

17 MS. MERCADO: Oh, the local programs are going to
18 be in Duluth?

19 MR. MCKAY: You're just going to have a problem
20 doing site visits, and other outside people. But it sounds
21 like we need to do it to accommodate schedules.

1 CHAIR EAKELEY: Let's work on it. Let's work on
2 it. Okay, 24/25 --

3 MR. MCKAY: Well, no. We need to set it, not work
4 on it.

5 CHAIR EAKELEY: We're going to meet the
6 Sunday/Monday, 24th/25th.

7 MR. MCKAY: Right. Okay.

8 MS. FAIRBANKS-WILLIAMS: So we're going to fly on
9 Saturday.

10 MS. MERCADO: So the site visits would be when, on
11 a Tuesday?

12 CHAIR EAKELEY: I don't know. I think we need to
13 see who is available and when.

14 MS. PERLE: Sunday is the 25th.

15 MR. MCKAY: Sunday/Monday is the 25th and the 26th.

16 CHAIR EAKELEY: Right. Sunday is the 25th. Oh,
17 I'm sorry, the 25th/26th? That's June 25/26.

18 MR. MCKAY: The year 2000.

19 MR. ERLNBORN: Did you have a Y2K problem?

20 CHAIR EAKELEY: With my pen. Any other business
21 before the board before we open up for public comment?

1 MR. ASKEW: I prepared a one-hour provisions
2 committee report, and I noticed you're not recognizing me.

3 CHAIR EAKELEY: You were recognized by your
4 absence. No, that's right.

5 MR. ASKEW: You don't want to hear from me.

6 CHAIR EAKELEY: We do, we do. We go back to item
7 number nine on the agenda.

8 MR. ASKEW: Actually, I would prefer to make a very
9 short provisions committee report, if that's acceptable to
10 everybody. Unfortunately -- and this is serious --
11 unfortunately, we were meeting at the same time as the
12 operations and regulations committee, so we only had one non-
13 committee member there, and that was Maria. And the others
14 of you were in the other meeting, and I think you missed a
15 very informative and interesting meeting of the provisions
16 committee.

17 And we covered a number of items, and there were a
18 number of handouts. And I don't have copies here of all
19 those handouts, so I'm going to ask Elizabeth to do a mailing
20 to you Monday with the handouts on the five issues that we
21 heard about, so that you can read for yourself what we were

1 told about.

2 CHAIR EAKELEY: Victor will make sure that
3 Elizabeth does that.

4 MS. MERCADO: Except for me.

5 MR. ASKEW: Yes, the committee members and Maria
6 don't need those mailings, but the other board members do.

7 CHAIR EAKELEY: Okay.

8 MR. ASKEW: If you could take care of that?

9 CHAIR EAKELEY: Materials distributed at the
10 provisions committee.

11 MR. ASKEW: We heard from Ted Faris at some length
12 about a program information survey that he gave us a handout
13 on that explains exactly what they're doing, and I would
14 encourage you to read it, because this is part of the whole
15 CSR issue, but it goes way beyond that, and that there's an
16 effort by the staff to gather data.

17 They've done a survey this summer, they've
18 collected a good bit of information, and they're working
19 toward a future where we can have a better program
20 information system than we have now, collect a lot of data
21 from programs, and hopefully move away in the future from

1 having to do emergency sort of surveys, emergency requests
2 for information, have all the data that you need here, so
3 that we can respond to requests from Congress or emergency
4 issues as they come up.

5 Secondly, we heard from Bob Gross on state
6 planning. And there is an update that will be sent to you on
7 where everything is with state planning. Most of our
8 discussion was around the technical assistance grants and I
9 think the total -- John, you can correct me -- is around
10 \$370,000 that we spent this year.

11 There was an original \$229,000 that we ended up
12 supplementing with money from the MNA budget that had to be
13 put out in the form of contracts, because we couldn't do
14 grants with that money. But it had gone for some very
15 interesting, and I think very productive uses to many, many
16 states around the country to facilitate state planning and
17 some other things that programs are engaged in.

18 We heard from Mike Genz an update on competition,
19 and of course that was the thing that we heard a good bit
20 about at the NLADA convention. And we had a discussion about
21 the process of how the decisions are made in the competition

1 process, how the decisions are made to give less than a
2 three-year, two-year, or one-year grant, everything that
3 leads up to that, and then we had some discussion about the
4 grantees that received less than a one-year grant.

5 We had a discussion led by our president about the
6 resolution adopted at the NLADA convention, and the staff's
7 response to that resolution, which I would characterize as a
8 constructive response and an agreement to work with NLADA and
9 others to move those issues forward that they expressed
10 concerns about.

11 I stated the opinion to Mike that I think
12 frequently the field programs, and even the people here in
13 Washington we deal with all the time, frequently see the
14 results of what we do, and don't always know how we got
15 there. More communication about the process as we move
16 through it, more of an understanding to all of them about how
17 these decisions get made would be very helpful so we won't
18 have sometimes a reaction based on not having full
19 information about these things.

20 And just like we changed some of the state planning
21 procedures this year in response to constructive suggestions

1 made last year, we will look at changing some of the
2 competition processes, based on constructive suggestions we
3 received from NLADA and others about this year's decisions.

4 We heard from Glenn Rodden, who's our new
5 technology person, a very enthusiastic presentation about all
6 the various things that are happening here within the
7 corporation on technology in conjunction with outside groups,
8 as well as working the field programs.

9 And I told him at the end of that we'd like to hear
10 from him again at a future meeting in 2000, because there was
11 so much in there, by then we were an hour over time. We
12 didn't adjourn until 1:30 or so when we were supposed to
13 adjourn at 12:30. Time was so short we really couldn't have
14 much of an interchange with him about it. But it was quite
15 exciting to hear, and there is also a written report on that
16 that will be coming to you.

17 Lastly -- we moved them up on the agenda -- was a
18 report from the Project for the Future of Equal Justice,
19 which is a joint effort by NLADA and the Center for Law and
20 Social Policy that's funded by the Sorrells Foundation, the
21 Open Society Institute, and the Ford Foundation, to work on

1 two issues: One, technology, and Glenn is involved with them
2 in a lot of these efforts, and there's a lot going on there,
3 and you'll be getting materials on that as well. And
4 secondly -- if I can find my notes here -- what they describe
5 as a public awareness campaign.

6 And we heard presentations on this at the opening
7 assembly at the NLADA convention, and they have retained a
8 group that is doing some surveys about public acceptance of
9 legal services on the one hand, and public perceptions about
10 poverty on the other, and coming up with some data that will
11 be helpful as programs and states move to improve their fund-
12 raising efforts.

13 And they're doing some focus groups, as I told
14 LaVeeda, they're doing one in Birmingham in December that she
15 might want to sit in, and they're going to do 10 focus groups
16 around the country in the next few months to gather data
17 through that to inform this process.

18 And they're working on developing materials that
19 will assist programs in doing better public awareness
20 campaigns on their own behalf, but also to assist them in
21 fund-raising.

1 And it was quite interesting, and they have a lot
2 going on, and they didn't tell us how much money they've
3 gotten from these two foundations, but it must be a good bit,
4 because they're doing an awful lot.

5 And our staff is involved in various ways on
6 committees with them in working with them on some of these
7 things, but it's quite interesting. And I encourage you to
8 read the material you get from them, and it's something we
9 may want to keep in touch with and hear more about as we move
10 into the future.

11 CHAIR EAKELEY: Thank you, Bucky. I have a
12 question. The Watlington-Smegal-Broderick committee report
13 questioned whether or not we should be holding committee --
14 or, suggested that we should be holding committee meetings
15 simultaneously, freeing up more time for site visits and also
16 reducing dead time.

17 We had changed things about a year ago to try to
18 schedule provisions committee at a time when all board
19 members could attend. Well, there's just too much on the
20 calendar for ops and regs this time, but the thought was that
21 most board members wanted to learn about what the corporation

1 was doing with respect to the provision for the delivery of
2 legal services.

3 And I just wanted to get a sense from the board
4 before we have our conference call as a follow-up to the
5 committee report, to see whether or not -- I mean, I think
6 we've been doing better on the site visits. Denver and
7 Seattle were very meaningful, and we need more time to do
8 that, but I didn't know what the sense of the board was, in
9 terms of the scheduling issue that was presented by the
10 committee.

11 MS. BATTLE: I think it's always helpful if we do
12 get a chance to attend. I know that it will elongate the
13 weekend, depending on how much you've got on the agenda to do
14 that, but also we would have enjoyed having an opportunity to
15 sit in this weekend on what happened in provisions.

16 MS. MERCADO: And I do think while on the one hand,
17 it might make the day of committee meetings a little bit
18 longer, on the other hand, the board meeting, it's shorter,
19 because the full board, hopefully, will have participated in
20 the provisions committee or ops and regs. I know I'm usually
21 one of the ad hoc ops and regs persons, just because I'd

1 rather deal with it as it's being worked on, rather than
2 later, after it's already been produced.

3 So my preference is to have the committees at
4 different times. Although finance is fairly short most of
5 the time and we can do that in conjunction with something
6 else.

7 CHAIR EAKELEY: Ernestine?

8 MS. WATLINGTON: I think it's just a matter of
9 scheduling there and I do like to sit in on the program
10 thing, because that's where you really hear what's going on,
11 and ours is, you know, dealing with, like LaVeeda said, there
12 was no way we could have combined it.

13 But there was an overall suggestion, looking at the
14 whole way of things, that our committee looked at the, you
15 know, when trying to schedule.

16 Now, this has nothing to do with that, but as you
17 get new people into -- as I said about training, I think some
18 of the new ones need to go back and consider the older ones
19 instead, because Edna had to call me.

20 MS. FAIRBANKS-WILLIAMS: In the morning, yes.

21 MS. WATLINGTON: Because I had called Larry to find

1 out what hotel we were staying at. I mean, that kind of
2 information is very helpful to us.

3 And the whole overall thing of scheduling a
4 meeting, I think they need to look more at, you know, of
5 getting information out. And though I don't, you know, have
6 access to secretaries who do the scheduling, or whatever, I
7 have to do all that on my own.

8 So even as far as the whole thing sort of meetings
9 and everything, I think it really needs to be looked at
10 overall.

11 CHAIR EAKELEY: Okay, we'll pick that up again in
12 our conference call in a week or two.

13 MR. ASKEW: May I say we're going to talk about the
14 Broderick report later, but I personally thought one
15 recommendation in there was very constructive, which is I, as
16 a committee chair, should circulate my agenda in advance to
17 my committee members to get their feedback and reaction,
18 which I mailed it Monday. All right, and I apologize.

19 But one thing we are going to try and do as a
20 committee is maybe think of a whole year's worth of committee
21 meetings, and do a schedule for the year, so that we can

1 anticipate some issues and have a schedule and then if
2 emergency things come up, add them to the agenda.

3 So we're going to be thinking about what our
4 committee should do during the entire year of 2000. If those
5 of you have some suggestions about field issues, or topics
6 that you would like to see on our agenda, you're quite
7 welcome to suggest them to us in the meantime, and we'll try
8 by the January meeting maybe, to have an idea of what the
9 whole year will look like.

10 MS. WATLINGTON: Bucky, I think all of the ideas
11 were constructive. And once you get something -- and I know
12 people that, you want the other board members, you know, to
13 come up with their ideas to increase it, but that's where you
14 want to look at a subject like that, to see how can we do
15 what we do better.

16 CHAIR EAKELEY: If there are no other questions of
17 the provisions committee chair, then we are on public
18 comment, and I invited the public -- I would invite public
19 comment, and Wilhelm, welcome.

20 MR. JOSEPH: Good morning. Thank you. I did not
21 come prepared to say anything, but I should make a few

1 comments.

2 One, I'd like to say I thank the board for being
3 engaged in a beautiful exercise in democracy this morning.

4 Number two, I want to say that while the OIG and
5 LSC management, I guess, I wanted to say that John McKay, who
6 I talk to very frequently these days, that I want to continue
7 to be accessible to the field, even when we don't agree on
8 points, keep that access going. I find John very open and we
9 appreciate that. It gives us opportunities to resolve many
10 things.

11 The last point, I understand that he has told the
12 board that while the letters to Congress include some
13 inaccurate information with regard to the legal aid view. I
14 think the letter says that we are denied LSC office of
15 compliance and enforcement access, and I understand he said
16 it's not accurate.

17 I also want to further clarify that, that this
18 question of access with the Legal Aid Bureau was worked out
19 before that letter was sent. And I am on record, my board's
20 records, by saying it was worked out.

21 So now I have a conflicting situation. I have a

1 letter from the corporation which carries all the weight with
2 my board, saying that we denied access to LSC. And I have
3 told my board we have not done so. You know, so I just want
4 to make sure --

5 CHAIR EAKELEY: That needs to be clarified, because
6 John reported to us that in fact, you worked out a protocol
7 that we expect to be a model for other programs.

8 MR. JOSEPH: But I'm stressing this protocol was
9 worked out before that letter was sent to Congress. So the
10 appropriate actions need to be taken to --

11 CHAIR EAKELEY: Yes.

12 MR. JOSEPH: Okay?

13 CHAIR EAKELEY: Yes.

14 MR. JOSEPH: Thank you very much.

15 CHAIR EAKELEY: Any other public comment or private
16 comment?

17 M O T I O N

18 CHAIR EAKELEY: Then is there a motion to adjourn?

19 MR. ERLNBORN: So moved.

20 CHAIR EAKELEY: Second?

21 MS. WATLINGTON: Second.

1 CHAIR EAKELEY: All those in favor?

2 (Chorus of ayes.)

3 CHAIR EAKELEY: The ayes have it. Have a happy
4 Thanksgiving, everyone. And merry -- well, we'll hopefully
5 be on the phone before Christmas.

6 (Whereupon, at 1:31 p.m., the meeting was
7 adjourned.)

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